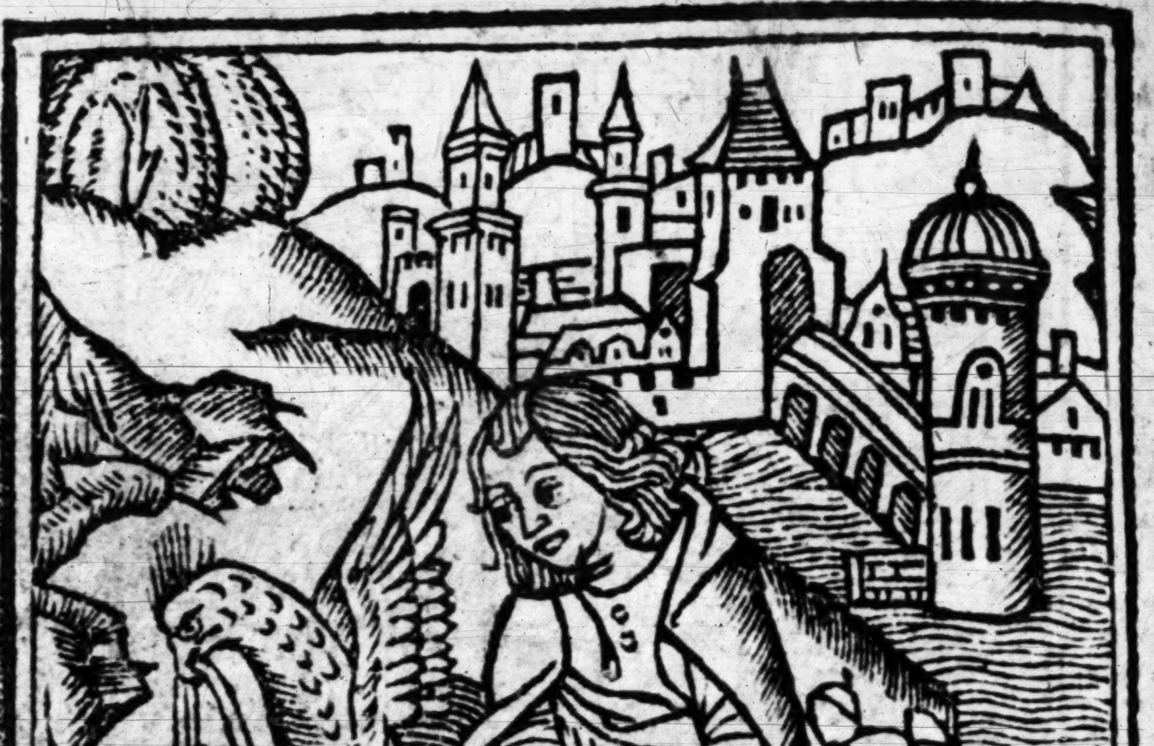
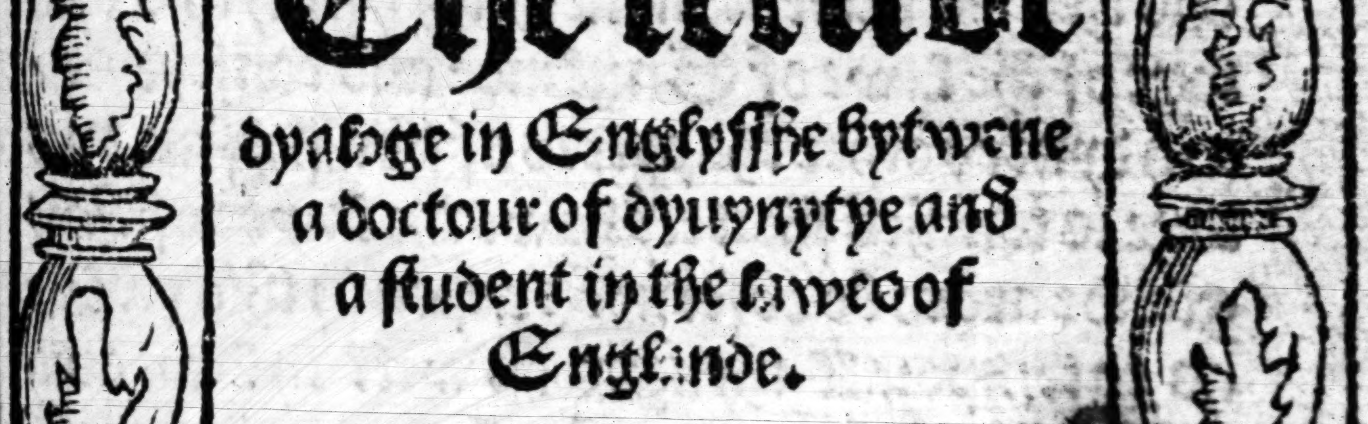
¶ And theſe bokes be for to ſell at the ſygne of ſeynt Iohn̄ Euangelyſte in ſeynt Martyns paryſſhe beſyde Charyngcroſſe.



The ſecũde

dyaloge in Englyſſhe bytwene
a doctour of dyuynytye and
a ſtudent in the lawes of
Englande.



Here after foloweth the seconde dyaloge in Englyſſhe bytwene a doctour of dyuynyte ⁊ a ſtudent in the lawe of Englande. In the begynnynge of whiche dyaloge the Doctoure anſwereth to certayne queſtyons whiche the Student made to the Doctour before the makynge of this dyaloge concernynge the lawes of Englande and conſcyence / as appereth in a dyaloge made bytwene theym in latyn the .xxiiii. chapytre.

And he anſwereth alſo to dyuers other queſtyons that the ſtudent maketh to hym in this dyaloge of the lawe of Englande and conſcyence / ⁊ in dyuers other chapytres of this preſent dyaloge is touched ſhortely howe the lawes of Englande are to be obſerued ⁊ kepte in this realme as to temporall thynges as well in lawe as in conſcyence before any other lawes / ⁊ in ſome of the chapytres of this boke is alſo touched that ſpyrytuall Juges in dyuers caſes be bounde to gyue theyr Jugementes accordynge to the kynges lawes. And in the latter ende of the boke the doctour moueth dyuers caſes cõcernyng the lawes of Englande / wherin he douteth howe they may ſtande with cõſcyence / wherunto the ſtudent maketh ãſwere in ſuche maner as to the reder wyll appere.

¶ The introduccyon.

¶ Student. In the latter ende of our fyrſte dyaloge in latyn I put dyuers caſes grounded vpon the lawes of Englande wherin I douted and yet do what is to be holden therin in conſcyence. But for as moche as the tyme was then farre paſt I ſhewed the that I wolde not deſyre the to make anſwere to theym forthwith / but at ſome better leaſure / wherunto thou ſaydeſt thou woldeſt not onely ſhewe thyne oppynyon in tho caſes / but alſo in ſuche other caſes as I wolde put / wherfore I pray the nowe for as moche as me thynketh thou haſt good leaſure that thou wylte ſhewe me thyne oppynyon therein.

¶ Doctour. I wyll with good wyll accomplyſſhe thy deſyre / but I wolde that whan I am in doute what the lawe of this realme is in ſuche caſes as thou ſhalte put that thou woldeſt ſhewe me what the lawe is therin / for thoughe I haue by occaſyon of our fyrſt dyaloges lerned many thynges of the lawes of this realme whiche I knewe not before / yet neuertheles there be many mo thynges that I am yet ygnoraunt in and that peraduenture in theſe ſelfe caſes that thou haſt put and intendeſt to put / ⁊ as I ſayd in the fyrſt dyaloge in latyn the .xx. chapytre / to ſerche cōſcyence vpō any caſe of the law it is in vayne but where the lawe in the ſame caſe is perfytly knowen. ¶ Student. I wyll with good wyll do as thou ſayſt / and I intende to put dyuers of the ſame queſtyons that be in the laſt chapytre of the ſayd dyaloge in latyn / and ſomtyme I intende to alter ſome of theym and to adde ſome newe queſtyons to theym ſuche as I ſhall be mooſt in doute of. ¶ Doctour. I praye the do as thou ſayſt and I ſhall with good wyll eyther make anſwere to theym forthwith as well as I can or take lenger reſpyte to be aduyſed / or elles peraduenture agre to thyne oppynyon therin as I ſhall ſe cauſe. But fyrſt I wolde gladly knowe the cauſe why thou haſt begon this dyaloge in the Englyſſhe tonge ⁊ not in the latyn tonge as the fyrſte caſes that thou deſyreſt to knowe myne oppynyon in be / or in Frenche as the ſubſtaunce of the lawe is. ¶ Student. The cauſe ys this. It is ryght neceſſary to all men in this realme bothe ſpyrytuall and temporall for the good orderynge of theyr conſcyence to know many thynges of the lawe of Englande that they be ygnoraunt in. And thoughe yt had ben more pleaſaunt to theym that be lerned in the latyn tonge to haue had it in latyn rather thē in Englyſſhe. yet neuertheleſſe for as moche as many can rede Englyſſhe that vnderſtande no latyn / and ſome that can not rede Englyſſhe by herynge it redde may lerne dyuers thynges by it that they ſholde not lerne yf it were in latyn. Therfore for the profyte of the multytude it is put in to the Englyſſhe tonge rather then in to the Latyn or Frenche tonge. For yf it had ben in Frenche fewe ſholde haue vnderſtande it but they that be lerned in the lawe ⁊ they haue leeſt nede of it / for as moche as they knowe the lawe in the ſame caſes without it / and can better declare what conſcyence wyll therupon thē they that knowe not the lawe nothynge at all. To theym therefore that be not lerned in the lawe of the realme ys this treatyce ſpecyally made / for thou knoweſt well by ſuche ſtudye as thou haſte taken to haue ſome knowlege of the lawe that it is to theym mooſt expedyent.

¶ **Doctoure.** It is trewe that thou ſayſt / and therefore I praye the nowe procede to thy queſtyons.

¶ The fyrſt queſtyon of the ſtudent.

The fyrſt chapytre.

¶ Student. If tenaunt in tayle after poſſybylytye of yſſue extyncte do waſte / whether doth he herby offende in conſcyence thoughe he be not punyſſhable of waſt by the lawe.

¶ Doctour. Is the lawe clere that he is not punyſſhable for the waſte. ¶ Student. ye verily. ¶ Doctour. And what is the lawe of tenauntes for terme of lyfe or for terme of yeres yf they do waſte. ¶ Student. They be punyſſhable of waſte by the ſtatute and ſhall yelde treble damages / but at the comen lawe before that ſtatute they were not punyſſhable.

¶ Doctour. But whether thynkeſt thou that before that ſtatute they myght haue done waſte with conſcyence bycauſe they were not punyſſhable by the lawe. ¶ Student. I thynke not / for as I take it the doynge of the waſte of ſuche pertyculer tenauntes for terme of lyfe for terme of yeres / or of tenauntes in dower / or by the curteſy is prohybyte by the law of reaſon / for it ſemeth of reaſon that when ſuche leaſes be made or that ſuche tytles in dower or by the curteſy be gyuen by the lawe that there is onely gyuen vnto theym the annuall profytes of the lande and not the houſes and trees and the grauell to dygge and cary away / wherby the hole profyte of theym in the reuercyon ſholde be taken away for euer. And therefore at the comen lawe for waſte done by tenaunt in dower or tenaunt by the courteſye there was punyſſhment ordeyned by the lawe by a prohybycyon of waſte wherby they ſholde haue yelded damages to the value of the waſte. But agaynſte tenaunt for terme of lyfe or for terme of yeres lay no ſuche prohybycyon for there was no maxyme in the lawe therin agaynſt them as there was agaynſt the other. And I thynke the cauſe was for as moche as it was Iuged a folye in the leſſour that made ſuche a leaſe for terme of lyfe or for terme of yeres that at the tyme of the leſſe he dyd not prohybyte theym that they ſholde not do waſte / and ſyth he dyd not prouyde no remedye for hym ſelfe / the lawe wyll none prouyde. But yet I thynke not that the intent of the lawe was that they myght lawfully and with good conſcyence do waſte / but agaynſt tenauntes in dower and by the courteſye the lawe prouyded remedye / for they had theyr tytle by the lawe. ¶ Doctour. And

Veryly me thynketh that this tenaunt in tayle as to doynge of waſte ſholde be lyke to a tenaunt for terme of lyfe / for he ſhall haue the lande no lenger then for terme of his lyfe no more then a tenaunt for terme of lyfe ſhall / and the waſte of this tenaunt is as grete hurte to hym in the reuercyon or remayndre as is the waſte of a tenaunt for terme of lyfe / and yf he alyen the donour ſhall entre for the forfeyture as he ſhall vpon the alyenacyon of a tenaunt for terme of lyfe / and yf he make defaute in a precipe quod reddat the donour ſhall be receyued as he ſhall be vpon the defaute of a tenaunt for terme of lyfe / and therfore me thynketh he ſhall alſo be punyſſhable of waſt as tenaunt for terme of lyfe ſhall. ¶ Student. If he alyen the donour ſhall entre as thou ſayſt bycauſe that alyenacyon is to his dyſherytaunce / and therefore it is a forfeyture of his eſtate / and that is by an auncyent maxyme of the law that gyueth that forfeyture in that ſelfe caſe / and yf he make defaute in a precipe quod reddat he in the reuercyon as thou ſayſt ſhall be receyued but that is by the ſtatute of. w. ii. for at the comon lawe there was no ſuch receyte / and as for the ſtatute that gyueth the accyon of waſt agaynſt a tenaunt for terme of lyfe and for terme of yeres it is a ſtatute penall and ſhall not be taken by equytye/ and ſo there is no remedye gyuen agaynſt hym neyther by comon lawe nor by ſtatute as there is agaynſt tenaunt for terme of lyfe/ & therfore he is vnpunyſſhable of waſte by the lawe. ¶ Doctour. And thoughe he be vnpunyſſhable of waſt by the lawe yet neuertheles me thynketh he may not by conſcyence do that that ſhall be hurtefull to the inherytaunce after his tyme/ ſyth he hath the lande but for terme of his lyfe no more then a tenaunt for terme of lyfe maye/ for then he ſholde doo as he wolde not be done to/ for thou agreeſt thy ſelfe that thoughe a tenaunt for terme of lyfe was not punyſſhable of waſte before the ſtatute that yet the lawe Juged not that he myght ryghtfully & with good conſcyence do waſte. And therfore at at this day yf a feffement be made to the vſe of a man for terme of lyfe/ thoughe there lye no accyon agaynſte hym for waſte/ yet he offendeth conſcyence yf he doo waſte as the tenaunt for terme of lyfe dydde afore the ſtatute when noo remedye laye agaynſt hym by the lawe.

❡ Student. That is true / but there is grete dyuerſytye bytwene this tenaunt and a tenaunt for terme of lyfe / for this tenaunt hath good authorytye by the donour to do waſte / and ſo hath not the tenaunt for terme of lyfe as it is ſayd before. For the eſtate of a tenaunt in tayle after poſſybylytye of yſſue extyncte is in this maner.

❡ Whenne landes be gyuen to a man and to hys wyfe and to the heyres of theyr two bodyes begotten / and after the one of theym dyeth without heyres of theyr bodyes begotten / thenne he or ſhe that ouerlyueth / is called tenaunt in tayle after poſſybylytye of yſſue extyncte / bycauſe there can neuer by no poſſybylytye be any heyre that may inheryte by force of that gyfte. And thus it appereth that the dones at the tyme of the gyfte receyued of the donour eſtate of enherytaunce whiche by poſſybylytye myght haue contynued for euer / wherby they had power to cut downe trees ⁊ to do all thynge that is waſte as tenaunt in fee ſymple myght / and that authoryte was as ſtronge in the lawe as yf the leſſour that maketh a leſſe for terme of lyfe ſaye by expreſſe wordes in the leaſe that the leſſe ſhall not be punyſſhable of waſte. And therfore yf the donour in this caſe had graunted to the dones that they ſholde not be punyſſhable of waſte / that graunt had ben voyde bycauſe it was included in the gyfte before as it ſholde be vpon a gyfte in fe ſymple / & ſo for as moche as by the fyrſt gyfte and by the lyuerey of ſeaſon made vpō the ſame the dones hadde authorytye by the donour to do waſte. Therfore thoughe the one of the dones be nowe deed without yſſue ſo that it is certayn that after the dethe of the other the lande ſhall reuerte to the donour / yet the authorytye that they had by the donour to doo waſte contynueth as longe as the gyfte & the lyuerey of ſeaſon made vpon the ſame contynueth / and I take this to be the reaſon why he ſhall not haue in ayde as tenaunt for terme of lyfe ſhall / that is to ſay / for that he can not aſke helpe of that maxyme wherby it is ordeyned that a tenaunt for terme of lyfe ſhall haue in ayde / for he can not ſay but that he toke a gretter eſtate by the lyuerey of ſeaſō that was made to hym whiche yet contynueth then for terme of lyfe. And ſo I thynke hym not boūden to make any reſtytucyon to hym in the reuercyon in this caſe for the waſte. ¶ Doctour. Is thy mynde to proue that this tenaunt is not bounde to make reſtytucyon to hym in the reuercyon for the waſte or that thou thynkeſt that he may with clere conſcyence do all maner of waſt. ¶ Student. I intende to proue noo more but that he is not bounden to reſtytucyon to hym in the reuercyon. ¶ Doctour. Then I wyll ryght well agre to thyne oppynyon for the reaſon that thou haſt made / but yf thy mynde had ben to haue proued that he myght with clere conſcyence haue done all maner of waſte. I wolde haue thought the contrary therto / and that the tenaunt in fe ſymple maye not do all maner of waſte and dyſtruccyon with conſcyence / as to pull downe houſes and make paſtures of Cytees and townes / or to do ſuche other actes whiche be agaynſt the comon welth. And therefore ſome wyll ſaye that tenaunt in fe ſymple maye not with cõſcyence wylfully dyſtroy his wodes and cole pyttes wherby a hole countrey for theyr money haue had fuell. And yet thoughe he do ſo he is not bounde by cõſcience to make reſtytucyõ to no perſon incertayne / but nowe I pray the or thou procede to the ſeconde caſe that thou wylte ſomwhat ſhewe me what thou meaneſt when thou ſayeſt at the comon lawe it was thus or thus. I vnderſtãde not fully what thou meaneſt by that terme at the comon lawe. ¶ Student. I ſhall with good wyll ſhewe the what I mene therby.

¶ what is mente by this terme when it is ſayd/ thus it was at the comō lawe. The .ii. chapytre

¶ Student. The comon lawe is taken thre maner of wayes. Fyrſt it is taken as the lawe of this realme of Englande dyſccyuered from all other lawes/ and vnder this maner taken. It is ofte tymes argued in the lawes of Englande what matters owe of ryght to be determyned by the comon lawe/ and what by the admyralles courte or by the ſpyrytuall courte. And alſo yf an oblygacyon bere date out of the realme/ as in Spayne Fraunce or ſuche other/ It is ſayd in the lawe and trouthe it is that they be not pledable at the comon lawe. Secondelye the comon lawe is taken as the kynges courtes of his benche or of the comon place/ and it is ſo taken when a plee is remouyd out of auncyen demeane for that the lande is franke fee & pledable at the comon lawe/ that is to ſay in the kynges courte & not in auncyen demeane. And vnder this maner takē/ it is ofte tymes pleded alſo in baſe courtes as in courte barons the countye & the courte of pypouders & ſuche other that this matter or that. &c. ought not to be determyned in that courte but at the comon lawe that is to ſay in the kynges courtes. &c.

¶ Thyrdly by the comen lawe is vnderſtande ſuche thynges as were lawe before any ſtatute made in that poynt that is in queſtyō ſo that that poynte was holden for lawe by the generall or pertyculer cuſtomes ⁊ maxymes of the realme or by the lawe of reaſon and the lawe of god no other lawe added to theym by ſtatute or otherwyſe as in the caſe before reherſed in the fyrſte chapytre where it is ſayd that at the comen lawe tenaunt by the courteſye and tenaunt in dower were punyſſhable of waſte / that is to ſaye / that before any ſtatute of waſte made they were punyſſhable of waſte by the groundes ⁊ maxymes of the lawe vſed before the ſtatute made in that poynte / but tenaunt for terme of lyfe ne for terme of yeres were not punyſſhable by the ſayd groundes ⁊ maxymes tyll the by ſtatute remedy was gyuen agaynſt theym / and therfore it is ſayd that at the comen lawe they were not punyſſhable of waſte. ¶ Doctour. I praye the nowe procede vnto the ſeconde queſtyon.

¶ The ſeconde queſtyon of the ſtudent.

The thyrde chapytre.

¶ Student. If a man be outlawed & neuer had knowlege of the ſute / whether may the kynge take al his goodes & reteyne theym in cōſcyence as he may by the lawe. ¶ Doctour. what is the reaſon why they be forfeyted by the lawe in that caſe. ¶ Student. The verye reaſon is for that it is an olde cuſtome & an olde maxyme in the lawe that he that is outlawed ſhall forfeyte his goodes to the kyng / and the cauſe why that maxyme began was this / when a man had done a treſpace to a nother or a nother offence / wherefore proceſſe of outlary lay / and he that the offence was done to hadde taken an accyon agaynſt hym accordynge to the lawe / yf he had abſented hym ſelfe and had had no landes / there had ben noo remedy agaynſte hym / for after the lawe of Englande no man ſhalbe condempned without anſwere / or that he appere and wyll not anſwere / excepte it be by reaſon of any ſtatute. Therfore for the punyſſhment of ſuche offenders as wolde not appere to make anſwere and to be iuſtyfyed in the kynges courte / it hath ben vſed without tyme of mynde that an attachement in that caſe ſholde be dyrected agaynſt hym returnable in to the kynges benche or the comen place / and yf yt were returned therupon that he had nought whereby he myght be attached that then ſholde go forth a capias to take his perſon and after an alias capias ⁊ then a pluries/ and yf it were returned vpon euery of the ſayd capias that he coulde not be founde ⁊ he appered not thē ſholde an exigent be dyrected agaynſt hym whiche ſholde haue ſo longe day of returne that fyue countyes myght be holden before the returne therof and in euery of the ſayd fyue countyes the defendaunt to be ſolemplye called/ and yf he appered not then for his contumacye and dyſobedyence of the lawe the coroners to gyue Jugement that he ſhalde outlawed wherby he ſhall forfeyte his goodes to the kynge and leſe dyuers other aduauntages in the lawe that nedeth not here to be remembred. And ſoo bycauſe he was in this caſe called accordynge to the lawe ⁊ appered not it ſemeth that the kynge hath good tytle to the goodes bothe in lawe and conſcyence. ¶ Doctoure. If he had knowlege of the ſute in very dede it ſemeth the kyng hath good tytle in conſcyence as thou ſayeſt. But yf he had no knowlege therof/ it ſemeth not ſo/ for the defaute that is adiuged in hym as it appereth by thyne owne reaſon is his contumacye and dyſobedyence of the lawe/ and yf he were ygnoraunt of the ſute / then can there be aſſygned in hym no dyſobedyence for a dyſobedyence ymplyeth a knowlege of that he ſholde haue obeyed vnto. ¶ Student. It ſemeth in this caſe that he ſholde be compelled to take knowlege of the ſute at his perylle / for ſyth he hath attempted to offende the lawe / it ſemeth reaſon that he ſhallbe compelled to take hede what the lawe wyll do agaynſt hym for it / and not onely that / but that he ſholde rather offer amendes for his treſpace then to tary tyll he were ſued for it. And ſo it ſemeth the ygnoraunce of the ſute is of his owne defaute / ſpecyally ſyth in the lawe is ſet ſuche ordre that euery man may knowe yf he wyll what ſute is taken agaynſt hym and maye ſe the recordes therof when he wyll / and ſo it ſemeth that neyther the partye nor the lawe be not bounden to gyue hym noo knowlege therin. And ouer this I wolde ſomwhat moue ferther in this matter thus / that thoughe the accyon were vntrewe and the defendaunt not gyltye / that yet the goodes be forfeyted to the kynge for his not apparaunce in lawe and alſo in conſcyence / and that for this cauſe: the kynge as ſouerayne and hed of the lawe is bounden of Juſtyce to graunt ſuche wryttes ⁊ ſuche proceſſes as be appoynted in the lawe to euery perſon that wyll complayne. be his ſurmyſe true or falſe ⁊ therupō the kyng of Juſtyce oweth as well to make proceſſe to brynge the defendaunt to anſwere when he is not gyltye as when he is gyltye/ and then whe there is ſuche a maxyme in the lawe that yf a man be outlawed in ſuche maner as before appereth that he ſhall forfeyte his goodes to the kynge/ ⁊ maketh no excepcyon whether the accyon be true or Vntrue/ it ſemeth that the ſayd maxyme more regardeth the generall mynyſtracyon of Juſtyce: then the pertyculer ryght of the partye/ ⁊ that therfore the propertye by the outlawry ⁊ by the ſayd maxyme ordeyned for mynyſtracyon of Juſtyce is altered ⁊ is gyuen to the kynge as before appereth in lawe ⁊ conſcyence as well as yf the accyon were true And then the partye that is ſo outlawed is dryuen to ſue for his remedye agaynſt hym that hath ſoo cauſed hym to be outlawed Vpon an Vntrue accyon. ¶ Doctoure. If he haue not ſuffycyent to make recompence or dye before recouerye can be had what remedye is then.

¶Student. I thynke no remedye ⁊ for a ferther declaracyon in this caſe ⁊ in ſuche other lyke where the propertye of goodes may be altered without aſſent of the owner. It is to cōſyder that the propertye of goodes be not gyuen to the owners dyrectly by the law of reaſon nor by the lawe of god but by the lawe of man / ⁊ is ſuffered by the lawe of reaſon ⁊ by the lawe of god ſo to be. For at the begynnyng all goodes were in comon but after they were brought by the lawe of man in to a certayne propertye ſo that euery man myght know his owne: then when ſuche propertye is gyuen by the lawe of man the ſame lawe may aſſygne ſuche condycyons vpon the propertye as it lyſteth ſo they be not agaynſt the law of god nor the law of reaſon ⁊ may lawfully take away that it gyueth ⁊ appoynte how long the ꝓpertye ſhall cōtynue. And one cōdycyon that goth with euery propertye in this realme is that yf he that hath the propertye be outlawed accordynge to ſuche proceſſe as is ordeyned by the law / that he ſhall forfeyte the propertye to the kynge / and dyuers other caſes there be alſo whereby propertye in goodes ſhall be altered in the lawe and the ryght in landes alſo without aſſente of the owner wherof I ſhall ſhortly touche ſome without layenge any authorytye therein / for the more ſhortnes. fyrſt by a ſale in open market the propertye is altered. Alſo goodes ſtollen & ſeaſed for the kyng or wayued be forfeyte oneleſſe appele or endytment be ſued. Alſo ſtrayes if they be proclaymed and be not after claymed by the owner within the yere be forfeyte / and alſo a deodand is forfeyte to whome ſo euer the propertye was before excepte it belonged to the kynge and ſhall be dyſpoſed for the ſoule of him that was ſlayne therwith: and a fyne with a noneclayme at the comon lawe was a barre yf clayme were not made within a yere as it is nowe by ſtatute yf the clayme be not made within .v. yeres. And all theſe forfeytures were ordeyned by the lawe vpon certayne conſyderacyons whiche I omyt at this tyme / but certayne yt is that none of theym was made vpon a better conſyderacyon then this forfeyture of outlagarye was. For yf no eſpecyall punyſſhment ſholde haue ben ordeyned for offenders that wolde abſent theym ſelfe and not appere whẽ they were ſued in the kynges courtes many ſutes in the kynges courtes ſholde haue ben of ſmall effecte. And ſyth this maxyme was ordeyned for the execucyon of Juſtyce & as moche done therin by the comon lawe as polycye of man coulde reaſonablye deuyſe to make the partye haue knowlege of the ſute. and nowe is added therto by the ſtatute made the ſyxte yere of kynge Henry the .viii. that a wrytte of proclamacyon ſhall be ſued yf the partye be dwellyng in a nother ſhyre/ it ſemeth that ſuche tytle as is gyuen to the kyng therby is good in conſcyence: eſpecyally ſeyng that the kynge is bounden to make proceſſe vpon the ſurmyſe of the playntyfe & may not examyne but by the ple of the partye whether the ſurmyſe be true or not. But yf the partye be returned .v. tymes called where in dede he was neuer called as in the ſeconde caſe of the laſte chapytre of the ſayd dyaloge in latyn is conteyned / then it ſemeth the partye ſhall haue good remedye by petycyon to the kynge / ſpecyally yf he that made the returne be not ſuffycyent to make recompence or dye before recouerye can be had. ¶ Doctour. Nowe ſyth I haue herde thyne oppynyon in this caſe wherby it appereth that many thynges muſt be ſene or a full and a playne declaracyon can be made in this behalfe / & seynge also that the playne anſwere to this caſe ſhall gyue a grete lyght to dyuers other caſes that may come by ſuche forfeyture. I praye the gyue me a ferther reſpyte or that I ſhewe my full oppynyon therein & here after I ſhall ryght gladly do it. And therfore I pray the procede nowe to ſome other caſe.

¶ The thyrde queſtyon of the ſtudent.

The fourth chapytre.

¶ Student. If a ſtraunger do waſte in landes that another holdeth for terme of lyfe without aſſent of the tenaunt / whether maye he in the reuercyon recouer treble damages and the place waſted agaynſt the tenaunt for terme of lyfe accordynge to the ſtatute in conſcyence: as he may by the lawe yf the ſtraunger be not ſuffycyent to make recompence for the waſte done. ¶ Doctour. Is the lawe clere in this caſe that he in the reuercyō ſhall recouer agaynſt the tenaunt for terme of lyfe though that he aſſented not to the doynge of the waſte.

¶ Student. ye verylye & yet yf the tenaunt for terme of lyfe had ben bounden in an oblygacyon in a certayne ſome of money that he ſhold do no waſte he ſholde not forfeyte his bonde by the waſte of a ſtraunger / and the dyuerſytye is this. It hath ben vſed as an auncyent maxyme in the lawe that tenaunt by the curteſye & tenaunt in dower ſholde take the lande with this charge / that is to ſaye / that they ſholde do no waſte theym ſelfe ne ſuffre none to be done / and when an accyon of waſt was gyuen after agaynſte a tenaunt for terme of lyfe then was he taken to be in the ſame caſe as to that poynte of waſte as tenaunt by the curteſye & tenaunt in dower was / that is to ſay / that he ſholde do no waſte nor ſuffre none to be done for there is a nother maxym in the law of Englande that all caſes lyke vnto other caſes ſhall be Iuged after the ſame lawe as the other caſes be & ſyth no reaſon of dyuerſytye can be aſſygned why the tenaunt for terme of lyfe after an accyō of waſte was gyuen agaynſt hym ſholde haue any more fauour in the law then the tenaunt by the curteſye or tenaunt in dower ſholde / therefore he is put vnder the ſame maxyme as they be that is to ſay / that he ſhall do no waſt ne ſuffre none to be done / and ſo it ſemeth that the lawe in thys caſe dothe not conſyder the abylytye of the perſone that dothe the waſte whether he be able to make recompence for the waſt or not. But the aſſent of the ſayd tenauntes wherby they haue wylfully takē vpon them the charge to ſe that no waſte ſhall be done. ¶ Doctour. I haue herde that yf houſes of theſe tenauntes be dyſtroyed with ſodayne tempeſt or with ſtraunge enemyes that they ſhall not be charged with waſte. ¶ Student. Trouthe it is. ¶ Doctour. And I thynke the reaſon is bycauſe they can haue no recouerye ouer.

¶ Student. I take not that for the reaſon/ but that it is an olde reaſonable maxyme in the lawe that they ſholde be dyſcharged in thoſe caſes/ howe be it ſome wyll ſay that in thoſe caſes the lawe of reaſon doth dyſcharge theym/ and therefore they ſaye that yf a ſtatute were made that they ſholde be charged in thoſe caſes of waſte that the ſtatute were agaynſt reaſon and not to be obſerued/ but yet neuertheleſſe I take it not ſo/ for they myght refuſe to take ſuche eſtate yf they wolde/ and yf they wyll take the ſtate after the lawe made/ it ſemeth reaſonable that they take it with the charge ⁊ with the condycyon that is appoynted therto by the lawe though hurte myght folowe to theym afterwarde therby/ for it is ofte tymes ſene in the lawe/ that the lawe doth ſuffre hym to haue hurte without helpe of the law that wyll wylfully renne in to it of his owne acte not compelled therto and iugeth it his foly ſo to renne in to it/ for whiche foly comonly alſo he ſhall be without remedye in conſcyence. As yf a man take landes for terme of lyfe and byndeth hym ſelfe by oblyggacyon that he ſhall leue the lande in as good caſe as he founde it/ yf the houſes be after blowē downe with tēpeſt or dyſtroyed with ſtraunge enemyes as in the caſe that thou haſte put before he ſhall be bounde to repayre theym or elles he ſhall forfeyte his oblygacyon in lawe and conſcyence bycauſe it is his owne acte to bynde hym to it/ and yet the lawe wolde not haue bounde hym therto as thou haſt ſayd before. ¶ So me thynketh that the cauſe why the ſayd tenaunte. be dyſcharged in the lawe in an accyon of waſte when the houſes be dyſtroyed by ſodayne tempeſt or by ſtraunge enemyes is by a ſpecyall reaſonable maxyme in the lawe wherby they be excepted fro the other generall bonde before reherced that they ſhall at theyr perylł ſe, that no waſte ſhall be done and not by the lawe of reaſon / and ſyth there is no maxyme in this caſe to helpe this tenaũt ne that he can not be holpen by the lawe of reaſon / it ſemeth that he ſhall be charged in this caſe by his owne acte bothe in lawe and conſcyence whether the ſtraunger be able to recompence hym or uot. ¶ Doctour. I doute in this caſe whether the maxyme that thou ſpekeſt of be reaſonable or not that is to ſay / that tenantes by the curteſye and tenauntes in dower were bounde by the comon lawe that they ſholde do no waſte theym ſelfe / and ouer that at theyr perylł to ſe that no waſt ſholde be done by none other. For that lawe ſemeth not reſonable that byndeth a mã to an impoſſybylytye. And it is impoſſyble to preuent that no waſte ſhall be done by ſtraũgers / for it may be ſodaynly done in the nyght that the tenauntes can haue no notyce of / or by grete power that they be not able to reſyſt / and therfore me thynketh they ought not to be charged in thoſe caſes for the waſte onleſſe they may haue good remedye ouer. And then percaſe the ſayd maxyme were ſufferable ⁊ elles me thynketh it is a maxyme agaynſt reaſon.

¶ Student. As I haue ſayd before noo man ſhall be cõpelled to take that bonde vpon hym but he that wyll take the lande ⁊ yf he wyll take the lande it is reaſon he take the charge as the lawe hath appoynted with it / and then yf any hurte growe to hym thereby it is thrughe his owne acte ⁊ his owne aſſent. ¶ Doctour. Thoughe a man may refuſe to take eſtate for terme of lyfe or for terme of yeres / and a woman may refuſe to take her dower yet tenaunt by the curteſye can not refuſe to take his eſtate for immedyatly after the deth of his wyfe the poſſeſſyon remayneth ſtyll in hym by the acte of the lawe without entre / ⁊ then I put the caſe that after the deth of his wyfe he wold weyue the poſſeſſyõ ⁊ after waſt were done by a ſtraũger whether thynkeſt thou that he ſholde ãſwere to the waſt. Student. I thynke he ſholde by the law. Doctour. And how ſtãdeth that with reaſõ ſeynge there is no defaute in hym. Studẽt It was his defaute ⁊ at his own peryll that he wold mary an ẽheritryce wherupõ ſuch daũger myght folow. ¶ Doctour. I put caſe that he were within age at the maryage or that the lande dyſcended to his wyfe after he maryed her.

¶ Student. There thou moueſt a ferther doute then the fyrſt queſtyon is/ and thoughe it were as thou ſayeſt yet thou canneſt not ſaye but that there is as grete defaute in hym as is in hym in the reuercyon/ and that there is as grete reaſon why he ſholde be charged with the waſte as that he in the reuercyon ſholde be dyſheryted and haue no remedye ne yet profyte of the lande as the other hath/ & thoughe the ſayd in tyme maye be thought very ſtrayte to the ſayd tenauntes yet it is to be fauoured as moche as they may be reſonably: becauſe it helpeth moche the comon welthe/ for it hurteth the comon welthe gretely when woodes and houſes ben dyſtroyed/ and yf they ſholde anſwere for noo waſte but for waſte done by theym ſelfe there myght be waſt done by ſtraungers by theyr commaundement or aſſent in ſuche colourable maner that they in the reuercyō ſholde neuer haue proue of theyr aſſent. ¶ Doctour. I am content thyne oppynyon ſtande for this tyme/ and I pray the nowe procede to a nother queſtyon.

¶ The fourth queſtyon of the ſtudent.

The .v. chapytre.

❡Student. If he that is the very heyre be certyfyed by the ordynarye baſtarde and after brynge an accyon as heyre agaynſte a nother perſone / whether may any man knowynge the trouthe be of counſayle with the tenaunt and plede the ſayd certyfycate agaynſt the demaundaunt by conſcyence or not. ❡Doctoure. Is the lawe in this caſe that all other agaynſte whom the demaundaunt hath tytle ſhall take aduauntage of this certyfycate as well as he at whoſe ſute he is certyfyed baſtarde.

❡Student. ye verely and that for two cauſes whereof the one is this. There is a maxyme in the lawe that a myſchyefe ſhall be rather ſuffered then an inconuenyence / & then in this caſe yf a nother wryt ſholde afterwarde be ſente to a nother byſſhop in a nother accyon to certyfye whether he were baſtarde or not / peraduenture that byſſhop wolde certyfye that he were mulier that is to ſay lawfully begottē and then he ſholde recouer as heyre / and ſo he ſholde in one ſelfe courte be taken as mulier & baſtarde for auoydynge of whiche contraryoſytye the lawe wyll ſuffre no moo wryttes to go forthe in that caſe and ſuffereth alſo all men to take aduauntage of that certyfycate rather thē to ſuffre ſuche a cōtradyccyon in the courte which in the lawe is called an inconuenyence. And the other cauſe is bycauſe this certyfycat of the byſſhop is the hygheſt tryall that can be in this behalfe. But this is not vnderſtande but where beſtardye is layde in one that is partye to the wrytte / for yf baſterdye be layde in one that is eſtraunge to the wrytte as in a vouche pray en ayde or ſuche other / thē that baſterdye ſhall be tryed by .xii. men / by which tryall he in whom the baſterdye is layde ſhall not be concluded bycauſe he is not pryuy to the tryall & may haue no attaynte / but he that is partye to the yſſue may haue attaynte and therfore he ſhall be concluded and none other but he / & for as moche as the ſayd maxyme was ordeyned to eſchewe an inconuenyence / as before appereth it ſemeth that euery man lerned : may with conſcyence plede the ſayd certyfycat for auoydynge therof / and gyue counſayle therin to the partye accordynge to the lawe / for elles the ſayd inconuenyence muſte nedely folowe. But yet neuertheles I do not meane thereby that the partye may after when he hath barred the demaūdaunt by the ſayd certyfycat reteyne the lande in conſcyence / by reaſon of the ſayd certyfycat for thoughe there be no lawe to compell hym to reſtore it / yet I thynke well that in conſcyence he is bounde to reſtore yt yf he knowe that the demaundaunt is the very true heyre: whereof I haue put dyuers caſes lyke in the .xvii. chapytre of our fyrſt dyaloge in latyn but myne entent is that a mā lerned in the law in this caſe and other lyke may with cōſcyence gyue his counſayle accordynge to the lawe in auoydynge of ſuche thynges as the lawe thynketh ſholde for a reaſonable cauſe be eſchewed.

¶ Doctoure. Thoughe he that knoweth not whether he be baſterde or not may lawfully gyue his counſayle and plede the ſayd certyfycat. yet I thynke that he that knoweth hym to be the very true heyre maye nat plede it and that for two cauſes whereof one ys this. Euery man is bounde by the lawe of reaſon to do as he wolde be done to / but I thynke that yf he that pledeth that certyfycate were in lyke caſe he wolde thynke that noo manne knowynge the ſayde certyfycate too be vntrewe myghtee with conſcyence plede it agaynſt hym / wherfore no more may he plede it agaynſt none other The other cauſes is this all thoughe the certyfycate be pleded yet is the tenaunt bounden in conſcyence to make reſtytucyon therof as thou haſt ſayd thy ſelfe / and thē in caſe that he wolde not make reſtytucyon / then he that pledeth the plee ſholde renne thereby in lyke offence for he hath holpen to ſet the other man in ſuche a lybertye that he may choſe whether he wyll reſtore the lande or not and ſo he ſholde put hym ſelfe to the ieoperdye of a nother mānes conſcyence. And it is wryten Eccleſiaſtic .iii. Qui amat periculum peribit in illo / that is / he that wylfully wyll put hym ſelfe in ieoperdye to offend ſhall peryſſhe therin. And therfore it is the ſureſt way : to eſchew perylles / and as for the inconuenience that thou ſeyſt muſt nedely folow but the certyfycate be pleded : as to that it may be āſwered that it may be pleded by ſome other that knoweth not that he is the very heyre / yf the caſe be ſoo farre put that there ys none other lerned there but he then me thynketh he ſhall rather ſuffre the ſayd inconuenyence then to hurte his owne cōſcience for alway charytye begynneth at hymſelfe and ſo euery man ought to ſuffre all other offences rather then he hymſelfe ſholde offende. And nowe that thou knoweſt myn oppynyon in this caſe I pray the procede to a nother queſtyon.

¶ The.v.queſtyon of the ſtudent.
The.vi.chapytre.

¶ Student. whether may a man with conſcyence be of counſayle with the playntyfe in an accyon at the comon lawe knowynge that the defendaunt hath ſuffycyent matter in conſcyence wherby he may be dyſcharged by a ſubpena in the chauncerye whiche he can not plede at the comon lawe or not. ¶ Doctoure. I praye the put a caſe therof in certeyne for elles the queſtyō is very generall. ¶ Student. I wyll put the ſame caſe that thou putteſt in our fyrſte dyaloge in latyn the.x.chapytre/ that is to ſay yf a man bounde in an oblygacyon/ pay the money and taketh none acquitaunce ſo that by the comon lawe he ſhall be compelled to paye the money agayne for ſuche conſyderacyon as appereth in the.xv.chapytre of the ſayd dyaloge where it is ſhewed euydently howe the lawe in that caſe is made vpon a good reaſonable groūde moche neceſſarye for all the people/ howe be it that a man may ſomtyme thrughe his owne defaute take hurte therby / wherin I pray the ſhewe me thyne oppynyō. ¶ Doctour. This caſe ſemeth to be lyke to the caſe that thou haſte put nexte before this / & that he that knoweth the payment to be made dothe not as he wolde be done to yf he gyue counſayle that an accyō ſholde be taken to haue it payde agayne.

¶ Studeut. If he be ſworne to gyue coūſayle accordynge to the lawe as ſergeauntes at the lawe be / it ſemeth he is beunde to gyue counſayle accordynge to the lawe for elles he ſholde not performe his othe. ¶ Doctoure. In thoſe wordes / accordyng to the lawe / is vnderſtāde the lawe of god & the lawe of reaſon as wel as the lawe & cuſtomes of the realme / for as thou haſt ſayd thy ſelfe in our fyrſt dyaloge in latyn the lawe of god & the lawe of reaſon be two eſpecyall groundes of the lawes of englande / wherfore as me thynketh he may gyue no counſayle ſauyng his othe neyther agaynſt the lawe of god nor the lawe of reaſon / & certayne it is that this artycle: that is to ſay: that a man ſhall doo as he wolde be done to / is grounded vpon bothe the ſayd lawes / ⁊ fyrſt that it is groũded vpõ the lawe of reaſon it is euydent of it ſelfe. And in the .vi. chapytre of Luke. it is ſayd. Et prout vultis vt faciant vobis homines: et vos facite illis ſimiliter. That is to ſaye / all that ye wyll that other men ſholde do to you do you to theym / ⁊ ſo it is grounded vpon the lawe of god / wherfore yf he ſholde gyue counſayle agaynſt the defendaũt in this caſe he ſhold do agaynſt bothe the ſayd lawes. ¶ Student. If the defendaunt had none other remedy but at the comon lawe I wolde agre well it were as thou ſayſt / but in this caſe he may haue good remedy by ſub pena / ⁊ this is the way that ſhal enduce hym dyrectly to that way. ¶ Doctour though the defendaunt maye be dyſcharged by ſub pena / yet the bryngynge in of his proffes there wyll be to the charge of the defendaunt / ⁊ alſo the proffes may dye or they come in. Alſo there is a grounde in the lawe of reaſon (quod nihil poſſumus contra veritatẽ) that is to ſay / we may do nothynge agaynſt the trouthe / ⁊ ſyth he knoweth that the trouthe is that the money is payde he may do nothynge agaynſt the trouth

[illegible] 6

quod nihil possumus contra
veritatem

and yf he ſholde be of counſayle with the playntyfe he muſte ſuppoſe and auerre that it is the very due dette to the playntyfe / and that the defendaūt withholdeth it fro hym vnlawfully / whiche he knoweth hym ſelfe to be vntrewe / wherefore he maye not with conſcyence in this caſe be of counſayle with the playntyfe / wherfore yf thou be contented with this anſwere I praye the procede to ſome other queſtyon.

¶ Student. I wyll with good wyll.

¶ The. vii. queſtyon the ſtudent.

The. vii. chapytre.

¶ Student. A man maketh a feffement to thuſe of hym and of his heyres / and after the feffoure putteth in his beeſtes to manure the groūde and the feffe taketh theym as damages feſaunte and putteth theym in pounde / and the feffour bryngeth an accyon of treſpas agaynſt hym for entryng in to his grounde. &c. whether may any mā knowyng the ſayd vſe be of counſayle with the feffe to auoyde that accyon.

¶ Doctour. May he by the comon lawe auoyde that accyon ſeynge that the feffour ought in conſcyence to haue the profytes. ¶ Student. ye verylye for as to the comon lawe the hole intereſt is in the feffe / ⁊ yf the feffe wyll breke his cõſcyence and take the profytes the feffoure hath no remedye by the comon lawe but is dryuen in that caſe to ſue for his remedye by ſub pena for the profytes / and to cauſe hym to refeffe hym agayne / and that was ſomtyme the moſt comon caſe where the ſub pena was ſued that is to ſaye / before the ſtatute of Rycharde the thyrd / but ſyth that ſtatute the feffour may lawfully make a feffement. But neuertheles for the profytes receyued the feffoure hath yet no remedye but by ſub pena as he had before the ſayd eſtatute. And ſo the ſuppoſell of this accyon of treſpas is vntrewe in euery poynte as to the comon lawe. ¶ Doctour. Though the accyon be vntrewe as to the lawe / yet he that ſueth it ought in conſyence to haue that he demaundeth by the accyõ / that is to ſay damages for the profytes / and as it ſemeth no man maye with conſcyence gyue counſayle agaynſt that he knoweth conſcyence wolde haue done.

¶ Student. Though conſcyence wolde he ſholde haue the profytes / yet conſcyence wyll that for the attaynyng therof the feffour ſholde make an vntrue ſurmyſe. Therfore agaynſt that vntrue ſurmyſe euery man may with cōſcyence gyue his counſayle / for in that doynge he reſysteth not the playntyfe to haue the profytes / but he withſtandeth hym that he ſholde not maynteyne an vntrue accyon for the profytes. And it ſuffyſeth not in the lawe ne yet in conſcyence as me ſemeth that a man haue ryght to that he ſuyth for / but that alſo he ſue by a iuſte meanes / ⁊ that he haue bothe good ryght ⁊ alſo a good ⁊ a true conueyaunce to come to his ryght / for yf a mā haue ryght to landes as heyre to his fader ⁊ he wyll bryng an accyon as heyre to his moder that neuer had ryght / euery man may gyue counſayle agaynſt that accyon thoughe he knowe he haue ryght by a nother meanes / ⁊ ſo as me thynketh he maye do in dylatoryes whereby the partye maye take hurte yf yt were not pleaded / though he knowe the playntyfe haue ryght as yf the partye or the towne be myſnamed or yf the degrees in wryttes of entre be myſtakē / but if the partye ſhold take no hurte by admyttyng of a dylatorye / there he that knoweth that the playntife hath right may not plede that dylatorye as in a forme donu͂ to plede in abatement of the wrytte bycauſe he hath not made hym ſelfe heyre to hym that was laſt ſeaſed / or in a wrytte of ryght for that the demaundant hath omytted one that tended ryght ne ſuche other / ne he maye not aſſent to the caſtynge of an eſſon nor proteccyon for hym yf he knowe that the demau͂dant hath ryght / ne he may not vouche for hym excepte it be that he knoweth that the tenaunt hath a true cauſe of voucher ⁊ of lyen / ⁊ that he dothe it to brynge hym therto / ⁊ in lyke wyſe he maye not pray in ayde for hym onelees he knowe the praye haue good cauſe of voucher and lyon / or that he knowe that the praye hath ſomewhat to plede that the tenaunt maye not plede as vyllynage in the demaundant or ſuche other. ¶ Doctour.

Thougthe the playntyfe hathe brought an accyon that is vntrewe and not maynteynable in the lawe / yet the defendaunt dothe wronge to the playntyfe in the withholdynge of the profytes as well before the accyon brought as hangynge / the accyon and that wronge as yt ſemeth the counſayloure dothe maynteyne /

and alſo ſheweth hym ſelfe to fauour the party in that wrong whē he gyueth cou͂ſayle agaynſt the accyon. ¶ Student. yf the playntyſe doo take that for a fauoure and a mayntenaunce of his wronge he Iuggeth ferther then the cauſe is gyuen/ſo that the counſaylour do no more but gyue counſayle agaynſt the accyon/for though he gyue hym counſayle to withſtande the accyō for the vntruthe of it/⁊ that he ſholde not confeſſe it and to make therby a fyne to the kynge without cauſe/yet it may ſtande with/that he maye gyue counſayle to the partye to yelde the profytes/and therfore I thynke he maye be of counſayle with hym at the comon lawe and be agaynſt hym in the chauncerye and in eyther courte gyue his counſayle without any contracyoſytye or hurte of conſcyence/and vpon this grounde it is that a man maye with good conſcyence be of counſayle with hym that hath lande by dyſcent or by a dyſcontynuaunce without tytle yf he that hath the ryght brynge not his accyon accordyng to the lawe for the recouerynge of his ryght in that behalfe.

¶ The. vii. queſtyon of the ſtudent.

The. viii. chyppytre.

¶ Student. If a man take a dyſtreſſe for det vpon an oblygacyon or vpon a contracte or ſuche other thyng that he hath right tytle to haue / but that he ought not by the lawe to dyſtrayne for it/ ⁊ neuertheles he kepeth the ſame dyſtres in pounde tyll he be payde of his dutye/ what reſtytucyon is he bounde to make in this caſe/ whether ſhall he repay the money bycauſe he is come to it by an vnlawfull meanes or onely to reſtore the partye for the wrongfull takynge of the dyſtreſſe or for neyther. ¶ Doctour. what is the lawe in this caſe. ¶ Student. That he that is dyſtreyned may brynge a ſpecyall accyo̅ of treſpas in this caſe agaynſt hym that dyſtreyned/ for he that toke his beeſtes wrongfully ⁊ kepte the̅ tyll he made a fyne/ ⁊ therfore he ſhal recouer that fyne in damages as he ſhall do for the reſydewe of the treſpas/ for that takynge of the money by ſuche compulcyon is taken in the lawe but as a fyne wrongfully taken thoughe it be his dutye to haue it. ¶ Doctoure. yet thoughe he may ſo recouer me thynketh that as to the repayment of the money he is not bounde therto in conſcyence ſo that he take no more tha̅ of ryght he ought to haue/ for thoughe he come to it by an vniuſt meane/ yet when the money is payde hym it is his of ryght ⁊ he is not boūde to repay it oneles it be recouered as thou haſte sayd/ ⁊ then whē he hath repayde it he is as me thynketh reſtored to his fyrſt accyon/ but to the redelyuere of the beeſtes with ſuche damages for ſuche hurte as he hathe by the dyſtreſſe. I ſuppoſe he is bounde to make recōpence of the in cōſcyence without compulcyon or ſute in the lawe/ for thoughe he myght lawfully haue ſued for his dutye in ſuch maner as the lawe hath ordred/ yet he may not take vpō hym to be his owne iuge ⁊ to come to his dutye agaynſt the order of the lawe/ ⁊ therfore yf any hurte come to the partye by that dyſorder he is bounde; to reſtore it: But I wolde thynke it were the more doute yf a man toke ſuche a dyſtreſſe for a treſpas done to hym ⁊ kepeth the dyſtreſſe tyll amēdes be made for the treſpas/ for in that caſe the damages be not in certayne but be arbytrable eyther by aſſent of the partyes or by. xii. men/ and it ſemeth that there is no aſſent of the partye in this caſe ſpecyally no fre aſſent/ for that he dothe is by compulcyon and to haue his dyſtreſſe agayne/ and ſoo his aſſente is not to be pondered in that caſe / for all is the aſſeſſynge of hym that toke the dyſtreſſe / and ſo he hathe made hym ſelfe his owne Juge and that is prohybyted in all lawes / but in that caſe where the dyſtreſſe is takē for dette he is not his owne Juge / for the dette was Juged incertayne afore by the fyrſt contracte / and therfore ſome thynke grete dyuerſytye bytwene the caſes.

¶. Student. By that reaſon it ſemeth that yf he that dyſtrayneth in the fyrſte caſe take any thynge for his damages that he is bounden in conſcyence to reſtore it agayne for damages be arbytrable ⁊ not certayne no more then treſpas is / and me ſemeth that bothe in the caſe of treſpas and dette he is bounde in conſcyence to reſtore that he taketh / for thoughe he ought in ryght to haue lyke ſome as he receyueth / yet he ought not to haue that money that he receyueth / for he came to that money by an Vniuſte meanes / wherfore it ſemeth he ought to reſtore it agayne. ¶ Doctoure. And yf he ſholde be compelled to reſtore it agayne ſholde he not yet for that he receyued it ones be barred of his fyrſt accyon not withſtandyng the repayment.

¶ Student. I wyll not at this tyme clerely aſſoyle the that queſtyon/ but thus I wyll ſay that yf any hurte come to hym therby it is thrughe his owne defaute for that he wolde doo agaynſt the lawe/ but neuertheleſſe a lytell I wyll ſaye to thy queſtyon/ that as me ſemeth when he hath repayde the money that he is reſtored to his fyrſt accyon. As yf a man condempned in an accyon of treſpas paye the money ⁊ after the defendaunt reuers the Jugement by a wrytte of errour ⁊ haue his money repayde/ then the playntyfe is reſtored to his fyrſt accyō and therfore yf he that in this caſe toke the money reſtored that he toke by the wrongfull dyſtreſſe or that he ordred the matter ſo lyberally that the other murmure not ne complayne not at it/ that he dyd very well to be ſure in conſcyence/ and therfore I wolde aduyſe euery man to be well ware howe he dyſtrayneth in ſuche caſe agaynſt the lawe. ¶ Doctour. Thy counſayle is good and I note moche in this caſe that the partye maye haue an accyon of treſpas agaynſt hym that dyſtrayned ſo that he is taken in the lawe but as a wronge doer/ and therfore to paye the money agayne is the ſure waye as thou haſt sayd before. And I praye the nowe ſhewe me for what thynge a man maye lawfully dyſtrayne.

¶ For what thynge a man may lawfully dyſtrayne. The.ix.chapytre.

¶ Studēt. A mā may lawfully dyſtrayne for a rente ſeruyce & for all maner of ſeruyces as homage: fealty: eſcuage ſute of court relyeffes and ſuche other. Alſo for a rente reſerued vpō a gyfte in tayle / a leaſe for terme of lyfe / for yeres or at wyll yf he reſerue the reuercyon the feffour ſhall dyſtrayne of comō ryght thoughe there be no dyſtreſſe ſpoken of. But yf a mā make a feffemēt in fee by indenture reſeruynge a rente he ſhall not dyſtrayne for that rente oneles a dyſtreſſe be expreſſely reſerued: and yf the feffement be made without dede reſeruynge a rente that reſeruacyon is voyde in the lawe and he ſhall haue the rente onely in cōſcyence and ſhall not dyſtrayne for it / and lyke lawe is where a gyfte in tayle or a leaſe for terme of lyfe is made the remayndre ouer in fee reſeruyng a rente that that reſeruacyō is voyd in the lawe. Alſo yf a man ſeaſed of landes for terme of lyfe graunteth awaye hys hole eſtate reſeruynge a rente / that reſeruacyon is voyde in the lawe withoute it be by indenture / and yf yt be by indenture / yet he ſhall not dyſtrayne for the rente but a dyſtreſſe be reſerued. Alſo for a mercyamente in a leete the lorde ſhall dyſtrayne / But for a mercyament in a courte Baron he ſhall not dyſtrayne. Alſo yf a man make a leaſe at Mychelmaſſe for a yere / reſeruynge a rente payable at the feeſt of the Annuncyacyon of oure lady and saynt Mychell the archaungell / in that caſe he ſhall dyſtrayne for the rente due at oure lady daye / but not for the rente due at Mychelmaſſe / bycauſe the terme ys expyred. But yf a man make a leaſe at the feeſt of Cryſtēmaſſe to endure to the feeſt of Cryſtemaſſe nexte folowynge / that ys to ſaye for a yere reſeruynge a rente at the foreſayd feeſt of the Annuncyacyon of oure lady and ſaynt Mychell the archaungell there he ſhall dyſtrayne for bothe rentes as longe as the terme contynueth / that ys to ſaye / tyll the foreſayd feeſt of Cryſtenmaſſe.

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¶Alſo yf a man haue lande for terme of lyfe of Johan at Noke and make a leaſe for terme of yeres reſeruynge a rente / that rente ys behynde / Johan at Noke dyeth / there he ſhall not dyſtrayne bycauſe hys reuercyon ys determyned. ¶Alſo yf he to whoſe vſe feffes be ſeaſed maketh a leaſe for terme of yeres or for terme of lyfe / or a gyfte in tayle reſeruynge a rente / there the reſeruacyon ys good and the leſſoure ſhall dyſtrayne.

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¶Alſo yf a towneſhyp be amercyed and the neyghboures by aſſente aſſeſſe a certayne ſomme vppon euery inhabytaunte and agree that yf yt be not payde by ſuche a daye that certayne perſones thereto aſſygned ſhall dyſtrayne. In thys caſe the dyſtreſſe ys lawefull / If lorde and tenaunte be / and the tetenaunte holdeth of the lorde by fealtye / and rente / and the lorde graunteth awaye the fealtye reſeruynge the rente / and the tenaunte attourneth in thys caſe / he that was lorde maye not dyſtrayne for the rente / for yt ys becomme a rente ſecke. But yf a manne make a gyfte in tayle reſeruynge fealtye and certayne rente / and after that he graunteth awaye the fealtye reſeruynge the rente and the reuercyon to hym ſelfe/ in this caſe he ſhall dyſtrayne for the rent/ for the graunte of the fealtye is voyde/ for the fealtye can not be ſeuered fro the reuercyon. Alſo for heryot ſeruyce the lorde ſhall dyſtrayne and for heryot cuſtome he ſhall ſeaſe and not dyſtrayne. Alſo yf a rente be aſſygned to make a partycyon or aſſygnement of dower egall he or ſhe to whome that rente is aſſygned maye dyſtrayne ⁊ in all theſe caſes aboue ſayd where a man may dyſtrayne he may not dyſtrayne in the nyght/ but for damages feſaunte/ that is to ſay/ where beeſtes do hurte in his grounde he maye dyſtrayne in the nyght. Alſo for waſtes/ for reperacyons/ for accomptes/ for dettes vpon contractes or ſuche other no man may lawfully dyſtrayne.

no

¶ The.viii.queſtyon of the ſtudent.

The.x.chapytre.

¶ Student. If a man do a treſpas and after make his executours and dye before any amendes made whether be his executours bounde in conſcyence to make amendes for the treſpas yf they haue ſuffycyent goodes thereto thoughe there be no remedy agaynſt theym by the lawe to compell theym to it. ¶ Doctoure. It is no doute but they are bounde therto in conſcyence before any other dede of charyty that they may do for hym of theyr owne deuocyō. ¶ Student Then wolde I wytte yf the teſtatoure made legacyes by his wyll / whether the executoures be bounde to do fyrſt / that is to ſay / to make amendes for the treſpas or to paye the legacyes / in caſe they haue no goodes to do bothe. ¶ Doctoure. To pay legacyes / for yf they ſholde fyrſt make recompence for the treſpas / and then haue not ſuffycyent to paye the legacyes they ſholde be takē in the lawe as waſters of theyr teſtatoures goodes / for they were not compellable by no lawe to make amendes for the treſpas becauſe euery treſpas dyeth with the perſone / but the legacyes they ſholde be cōpelled by the lawe ſpyrytuall to fulfyll / and ſo they ſholde be compelled to pay the legacyes of theyr owne goodes / and they ſhall not be compelled therto by no lawe nor conſcyence / but if the caſe were that he leue ſuffycyent goodes to do bothe / then me thynketh they be bounden to do bothe ⁊ that they be bounde to make amēdes for the treſpas before they may do any other charytable dede for the teſtatoure of theyr owne mynde as I haue ſayd before / excepte the funyrall expences that be neceſſarye which muſt be alowed before al other thynges. ¶ Studēt. And what the prouynge of the teſtament.

¶ Doctour. The ordynarye may nothynge take by conſcyence therefore / yf there be not ſuffycyent goodes beſyde to pay the dettes ⁊ to make reſtytucyon. And in lyke wyſe the executours be bounde to pay dettes vpon a ſymple contracte before any other dede of charyty that they maye do for theyr teſtatour of theyr owne deuocyon thoughe they ſhall not be compellyd therto by the lawe. ¶ Student. And whether thynkeſt thou that they be bounde to do fyrſt / that is to ſay / to make amendes for the treſpas or to pay the dettes vpon a ſymple contracte.

¶ Doctour. To pay the dette for that is certayne ⁊ the treſpas is arbytrable. ¶ Student. Thē for the playner declaracyō of this matter ⁊ other lyke I pray the ſhewe me thy mynde by what lawe is it that a mā may make executoures ⁊ that the executours yf they take vpō thē be bou̅de to performe the wyll ⁊ to dyſpoſe the goodes that remayne for the teſtatour. ¶ Doctour. I thynke that it is by the lawe of reaſon. ¶ Stude̅t. And me thynketh it ſholde be rather by the cuſtom of the realme. ¶ Doctour In all cou̅tres ⁊ in all landes they make executours. ¶ Student. That ſemeth to be rather by a generall cuſtome after that the lawe ⁊ cuſtome of propertye was brought in / the̅ by the lawe of reaſo̅ / for as long as all thynges were in comon there were no executours ne wylles: ne they neded not the̅ / ⁊ when ꝓpertye was after brought in me thynketh that yet makyng of executours and dyſpoſynge of goodes by wyll after a mannes dethe folowed not neceſſarylye therupon / for it myght haue ben a lawe that a ma̅ ſholde haue had the ꝓpertye of his goodes onely durynge his lyfe / ⁊ then his dettes payde / all his goodes to haue ben lefte to his wyfe and chyldren or nexte of his kynne without any legacyes makynge therof / and ſo myght it nowe be ordeyned to be by ſtatute / ⁊ the ſtatute good and not agaynſt reaſon / wherfore yt appereth that executoures haue noo authoryty: by the lawe of reaſon but by the lawe of man.

And by the olde lawe ⁊ cuſtome of this realme a man may make executours and dyſpoſe his goodes by his wyll/ and then hys executours ſhall haue the execucyon therof and his heyres ſhall haue nothynge/ but yf any pertyculer cuſtome helpe. And the executours ſhall alſo haue the hole poſſeſſyon ⁊ dyſpoſycyon of all hys goodes and catals as well reall as perſonall/ thoughe no worde be expreſſely ſpoken in the wyll that they ſhall haue theym/ and they ſhall haue alſo accyons to recouer all dettes due to the teſtatoure thoughe all dettes and legacyes of the teſtatour be payde before and ſhall haue the dyſpoſycyon of theym to the vſe of the teſtatour and not to theyr owne vſe/ and ſo me thynketh that the authorytye to make executours/ and that they ſhall dyſpoſe the goodes for the teſtatour/ is by the cuſtom of the realme. But then I thynke as thou ſayeſt that by the lawe of god they ſhall be bounde to do that fyrſt/ that is to the moſt profyte of the ſoule of theyr teſtatour where the dyſpoſycyon thereof is lefte to theyr dyſcrecyon/ ⁊ that I agre well is to paye dettes vpon contractes and to make amendes for wronges done by the teſtatour though they be not compelled therto by the lawe and custome of the realme yf there be none other dette nor legacye that they be bounde to paye by the lawe/but yf the dettes be payable by the lawe then whiche dette they ſhall do fyrſte in conſcyence I am ſomwhat in doute. ¶ Doctoure. Let vs fyrſte knowe what the comon lawe ys therin. ¶ Student. The comon lawe is that yf the teſtatour owe to two men ſeuerally by oblygacyon or by ſuche other maner that an accyon lyeth agaynſt his executonrs thereof by the lawe/and he leueth goodes to paye the one and not bothe/that in that caſe he that can fyrſt opteyne his Jugement agaynſt the executours ſhall haue execucyon of the hole/and the other ſhall haue no thynge/but to whiche of theym he ſhall in conſcyence owe his fauoure the comon lawe treateth not. ¶ Doctour. Therin muſt be conſydered the cauſe why the dettes began/and then he muſt after cōſcyence bere his lawfull fauoure to hym that hathe the cleryſt cauſe of dette/and yf bothe haue lyke cauſe/thē in cōſcyence he muſt bere his fauour where is moſt nede and greteſt charytye. ¶ Student. May the executours in that caſe delay that ac cyon that ys fyrſt taken yf it ſtande not with ſo good conſcyence to be payde as a nother dette wherof no accyon ys brought and procure that an accyon maye be brought therof and then to confeſſe that accyon/that he may ſo haue execucyon/and then the executours to be dyſcharged agaynſt the other. ¶ Doctoure. why may he not in that caſe paye the other without accyon and ſo be dyſcharged in the lawe agaynſt the fyrſt. ¶ Student. No Veryly for after an accyon ys taken the executours maye not mynyſtre the goodes ſo/but that he leue ſo moche as ſhall paye the dette wherof the accyon ys taken/and yf he do he ſhall pay yt of hys owne goodes / excepte a nother recouer and haue Jugement agaynſt hym hangynge that accyon and that without couyn. ¶ Doctour. Then to thy queſtyon J thynke that by delayes that be lawfull as by eſſon / emperlaunce / or by a dylatorye ple in a batement of the wrytte that ys trewe/he may delaye yt/but he maye plede noo Vntrewe plee to preferre the other to hys dutye. But J praye the what ys the lawe of legacyes reſtytucyons and dettes Vpon contractes that percaſe ought rather after charytye to be payde then a dette vpon an oblygacyō what may the fauour of the executours do in thoſe caſes. ¶ Student. Nothyng for yf they eyther performe legacyes/make reſtitucyons/or pay dettes vpon contractes ⁊ kepe not ſuffycyent to pay dettes whiche they are cōpellable by the lawe to pay/that ſhall be taken as a deuaſtauerunt bona teſtatoris/that is to ſay/that they haue waſted the goodes of theyr teſtatour ⁊ therfore they ſhall be compelled to pay the dettes of theyr owne goodes/⁊ ſo it is yf they pay a det vpō an oblygacyō wherof the day is yet to come thoughe it be the clerer det ⁊ that it be the more charyty to haue it payd. ¶ Doctour. yet in that caſe yf he to whom the dette is all redy owynge forbere tyll after the day of the other oblygacyō is paſt/then he maye pay hym without daūger. ¶ Studēt. That is true yf there be no accyō taken vpō it ⁊ though there be/yet yf that accyō may be delayde by lawfull meanes as thou haſt ſpoken of before tyll after the day ⁊ thē an accyō is taken vpon it thē may the executours cōfeſſe that accyō ⁊ then after iugement he may pay the det without daūger of the lawe. ¶ Doctour. Is not that confeſſynge of the accyō ſo done of purpoſe a couyn in the law

¶ Student. No verely / for couyn is where the accyon is vntrue / and not where the executours bere a lawfull fauour. ¶ Doctoure. The ordynary vpon the accompte in all the cases before reherced wyll regarde moch what is beſt for the teſtatoure. ¶ Student. But he maye not dryue theym to accompte agaynſt the order of the comon lawe.

¶ The .ix. queſtyon of the ſtudent.

The .xi. chapytre.

¶ Student. A mā is indetted to a nother vpō a ſymple cōtracte in .xx. li. and he maketh his wyll ⁊ bequetheth .xx. li. to Henry herte and dyeth ⁊ leueth goodes to his executours onely to bury hym with / and to performe the ſayd legacye / and after the ſayd executoures delyuer the goodes of theyr teſtatoure in performaunce of the ſayd bequeſte / whether is he to whom the byqueſte is made bounde in conſcyence to pay the ſayd dette vpon the ſymple cōtracte to the ſayd Henry harte or not.

¶ Doctoure. Is he not bounde thereto by the lawe. ¶ Student. No Veryly. ¶ Doctour. And what thynkeſt thou he is in conſcyence. ¶ Student. I thynke that he is not bounde therto in conſcyence/ for he is neyther ordynarye/ admynyſtratour/ nor executoure/ and I haue not herde that any man is bounde to paye dettes of any man that is dyſſeſſed/ but he be one of thoſe thre/ for the goodes that the teſtatour lefte to the executours were neuer charged with the dette/ but the perſone of the teſtatour whyle he lyued was onely charged with the dette & not his goodes/ and his executours that repreſent his eſtate after his dethe hauyng goodes therto of the teſtatours be charged alſo with the dettes and not the goodes. And therfore yf an executoure gyue awaye or ſelle the goodes of the teſtatoure or otherwyſe waſte theym/ he that hath the goodes is not charged with the dettes in lawe nor conſcyence/ but the executoures ſhall be charged of theyr owne goodes/ and in lyke wyſe yf Johan at Noke owe to A.B.xx.li.& A.B.oweth to C.D xx.li.and after A.B.dyeth inteſtate hauyng none other goodes but the ſayd .xx.li. whiche the ſayd Johan at Noke oweth hym/ yet the

no

ſayd.C.D.ſhall haue no remedye agaynſte the ſayde Johan at Noke for he ſtandeth not charged to hym in lawe nor conſcyence. But the ordynarye in that caſe muſt commyt admynyſtracyon of the goodes of the ſayde.A.B. And the ſayd admynyſtratoure muſt leuye the money of the ſayd Johan at Noke and paye yt to the ſayd.C.D. And the ſayd Johan at Noke ſhall not pay it hym ſelfe bycauſe he ys not charged therwith to hym / and no more me thynketh in this caſe that he to whome the byqueſt ys made is neyther charged to hym that the money was owynge to in lawe nor conſcyence. ¶Doctoure. Thenne ſhewe me thy mynde by what lawe yt ys grounded as thou thynkeſt that executoures be bounde to paye dettes before legacyes / whether ys yt by the lawe of god / or by the lawe of reaſon / or by the lawe of man.

¶Student. I thynke that yt ys bothe by the lawe of reaſon & by the lawe of god / for reaſon wyll that they ſhall doo fyrſte that ys beſte for the teſtatoure / and that ys to paye dettes that he ys bounde to / before legecyes that he ys not bounde to. ¶And alſo by the lawe of god they are bounden to paye the dettes. Fyrſt for ſyth they are bounden by the lawe of god to loue theyr neyghboure / they are bounde to doo for hym that ſhall be beſte for hym when they haue taken the charge thereto / as executours do when they agree to take the charge of the wyll of theyr teſtatoure vppon theym / and yt ys better for the teſtatoure that hys dettes be payde / wherefore hys ſoule ſhall ſuffre payne / thenne that hys legacyes be perforformed / wherefore he ſhall ſuffre noo payne for the not performynge of theym. And that is to be vnderſtande where the legacye is made of his owne fre wyll and not where it is made as a ſatyſfaccyon of any duetye. And after the ſayenge of ſaynt Gregorye / the verye trewe proffe of loue ys the dede. But thys man ys not in that caſe / for he neuer tooke the charge vppon hym to paye the dettes of the teſtatoure. And therfore he ys not bounde to theym in lawe nor conſcyence as me ſemeth. But rather the executoures ſholde haue ben ware or they hadde payde the legacyes ſeyng there were dettes to paye.

¶ Doctoure.

The executours myght none otherwyſe haue done in this caſe but to paye the legacyes for theym they ſholde haue ben compelled by the lawe to haue payde/and ſo they coulde not haue ben to haue payde the dette vpon a cõtracte. And therfore they dyd well in performynge of the legacye/but he to whome the legacye was made ought not to haue taken theym/but ought in conſcyence to haue ſuffered theym to haue gone to the payment of the dette/ & ſyth he dyd not ſo but toke theym/it ſemeth that when he toke theym/he toke theym with the charge in conſcyence to pay the dette/for ſyth the executours were compellable by the lawe to performe the byqueſt and not to pay the dette/therfore when they performed that byqueſte/they were dyſcharged therby agaynſt hym that the dette was owynge to in lawe and conſcyence & then the charge reſted vpon hym that toke the goodes where he ought not in conſcyence to haue taken theym/but yf it had ben a dette vpõ an oblygacyon or ſuche other dette/wherupon remedye myght haue ben had agaynſt the executours by the lawe/there I ſuppoſe that thoughe the executours had performed the legacye that yet he to whome the legacye was made performed had not ben charged in conſcyence to payment of the dette/for the executour ſtode ſtyll charged thereto of his owne goodes/⁊ he to whome that byqueſt was made was onely bounde in conſcyence to repay that he receyued to the executoure bycauſe he had no ryght to haue receyued it/for agaynſt the executour he had no ryght therto. ¶ Student. Then ſo yt ſemeth in thys caſe that in lyke wyſe he to whom the byqueſt was made ſholde repay that he receyued to the executours / and then they to pay it rather then he. ¶ Doctour. The executours haue no ferther medelynge with it as this caſe is / for when they perfourmed the byqueſte they were dyſcharged agaynſte bothe the other in lawe and conſcyence / and alſo he to whome the byqueſte was made ſtode not in this caſe charged to the executours / for as agaynſt theym he had good tytle by the lawe / and ſoo hys charge ſtandeth onely agaynſte hym that the dette is owynge to / and the ſame lawe that is in this caſe vpon a dette vpon a contracte is yf the teſtatour had done a treſpas wherupon he ought to haue made reſtytucyon that is to ſay that he to whom the byqueſt was made is boũde to make the amendes for the treſpas/for it ſholde be no dyſcharge to hym to pay it agayne to the executours without they payde it ouer:& it were vncertayn to hym whether they wolde paye yt or not. And therfore to be out of peryll yt ys neceſſarye that he paye yt hym ſelfe/and then ys he ſurely dyſcharged agaynſt all men.

¶ The.x.queſtyon of the ſtudent.
The.xii.chapytre.

¶ Student. A man ſeaſed of certayne lande in his demeane as of fee hath yſſue two ſonnes and dyeth ſeaſed after whoſe deth a ſtraunger abateth/and taketh the profytes/and after the eldeſt ſonne dyeth without yſſue and his broder bryngeth an aſſyſe of mortdaunceſtre as ſonne and heyre to his fader not makyng mencyon of his broder and recouereth the lande with damages fro the dethe of his fader as he may well by lawe/whether in this caſe the yonger broder be bounde in conſcyence to pay to the executours of the eldeſt broder the value of the profytes of the ſayd lande that belonged to the eldeſt broder in his lyfe or not. ¶ Doctour. what is thyn oppynyō therin. ¶ Studēt. that lyke as the ſayd ꝓfytes belonged of right to the eldeſt broder in his lyfe / and that he had full authorytye to haue releaſed as well the ryght of the ſayd lande as of the ſayd profytes / whiche releſſe ſholde haue ben a clere barre to the yonger broder for euer. That the ryght of the ſayd damages / whiche be in the lawe but a chatell / belonge to his executours and not to the heyre / for noo maner of chatell neyther reall nor perſonall ſhall not after the lawe of the realme deſcende to the heyre. ¶ Doctoure. Thou ſaydeſt in the caſe nexte before / that yt ys not of the lawe of reaſon that a man ſhall maye make executoures / and dyſpoſe his goodes by hys wyll / and that the executoures ſhall haue the goodes to dyſpoſe but by the lawe of man / and yf it be lefte to the determynacyon of the lawe of man / Thenne in ſuche caſes as the lawe gyueth ſuche chatelles to the executoures / they ſhall haue good ryght to theym.

and in ſuche caſes as the lawe taketh ſuche chatels fro theym / they be ryghtfully taken fro them. And therfore it is thought by many that yf a man ſue a wrytte of ryght of warde of a warde that he hath by his owne fee & dyeth hangynge the wrytte / and his heyre ſue a reſomõs accordynge to the ſtatute of .w. the .ii. and recouer / that in that caſe the heyre ſhall enioye the wardeſhyp agaynſt the executours / and yet it is but a chatell / and they take the reaſon to be bycauſe of the ſayd eſtatute / and ſoo myght yt be ordeyned by ſtatute that all wardes ſholde goo to the heyres and not to the executoures. Ryght ſo in this caſe ſyth the lawe is ſuche that the yonger broder ſhall in this caſe haue an aſſyſe of mortdaunceſtre as heyre to his fader / not makynge any mencyon of his elder broder and recouer damages as wel in the tyme of his broder as in his owne tyme / yt appereth that the lawe gyueth the ryght of theſe damages to the heyre / and therfore no recompence ought to be made to the executours as me ſemeth / and it is not lyke to a wryt of ayle where as I haue lerned ſyth our fyrſt dyaloge the demaundaunt ſhall recouer damages onely fro the dethe of his fader yf he ouer lyue the ayle/ and the cauſe is for the demaundaunt thoughe his ayle ouer lyued his fader muſt of neceſſytye make hys conueyaunce by his fader and muſt make hym ſelfe ſonne and heyre to his fader and coſyn and heyre to his ayle/ and therfore in that caſe if the fader ouer lyued the ayle the abatour were boũden in conſcyence to reſtore to the executours of the fader the profytes renne in his tyme/ for no lawe taketh theym fro hym / but otherwyſe it is in this caſe as me ſemeth. ¶ Student. If the yonger broder in this caſe had entred in to the lande without takynge any aſſyſe of mortdaunceſtre as he myght yf he wolde / to whom were the abatour then bounden to make reſtytucyon for thoſe profytes after thyne oppynyon

¶ Doctour. To the executours of the eldeſt broder/ for in that caſe there is no lawe that taketh theym fro theym / and therefore the generall grounde whiche is that all chatels ſhall go to the executoures holdeth in that caſe / but in this caſe that groũde is broken and holdeth not for the reaſon that I haue made before/ for comonly there is no generall grounde ſo ſure but that it fayleth in ſome pertyculer caſe.

¶ The.xi.queſtyon of the ſtudent. The.xiii.chapytre.

¶ Student. A man ſeaſed of lande in fee taketh a wyfe and after alyenyth the lande and dyeth/after whoſe dethe hys wyfe aſketh hyr dower ⁊ the alyene refuſeth to aſſygne it vnto hyr/but after ſhe aſketh hyr dower agayne and he aſſygneth it vnto hyr/whether is the alyene in thys caſe bounde in conſcyence to gyue the woman damages for the profytes of the lande after hyr thyrde parte fro the dethe of hyr huſbande/or fro the fyrſt requeſt of hyr dower/or neyther the oone nor the other. ¶ Doctoure. what is the lawe in this caſe. ¶ Student. By the lawe the woman ſhall recouer no damages/for at the comon lawe the demaundant in a wrytte of dower ſholde neuer haue recouerd damages/but by the ſtatute of Marton yt ys ordeyned that where the huſbande dyeth ſeaſed that the woman ſhall recouer damages whiche ys vnderſtande the profytes of the lande ſyth the dethe of hyr huſbande / and ſuche damages as ſhe hathe by the forberynge of yt / But in thys caſe the huſbande dyed not ſeaſed wherfore ſhe ſhall recouer no damages by the lawe. ¶ Doctoure. yet the lawe ys that immedyatly after the dethe of the huſbande the wyfe ought of ryght to haue hyr dower yf ſhe aſke yt thoughe hyr huſbande dyed not ſeaſed. ¶ Student. That ys trewe. ¶ Doctoure. And ſyth ſhe ought to haue hyr dower fro the dethe of hyr huſbande / yt ſemeth that ſhe ought in conſcyence to haue alſo the profytes fro the dethe of hyr huſbande thoughe ſhe haue noo remedye to come to theym by the lawe / for me thynketh that thys caſe ys lyke to a caſe that thou putteſt in oure fyrſte dyaloge in latyn the xvii. chapytre / that yf a tenaunte for terme of lyfe be dyſſeaſed and dye / and the dyſſeaſoure dyeth / and hys heyre entreth and taketh the profytes / and after he in the reuercyon recouereth the landes agaynſt the heyre as he ought to doo by the lawe / that in that caſe he ſhall recouer no damages by the lawe.

And yet thou agredeſt that in that caſe the heyre is bounde in conſcyence to pay the damages to the demaundaunt / and ſoo me thynketh in thys caſe that the feffe ought in conſcyence to pay the damages fro the dethe of her huſbande ſeyng that immedyatly after his deth ſhe ought to haue her dower. ¶ Student. Thoughe ſhe ought to be endowed immedyatly after the dethe of her huſbande / yet ſhe can lay no defaute in the feffe tyll ſhe demaunde hyr dower vpon the grounde / and that the tenaunt be not there to aſſygne it / or yf he be there that he wyll not aſſygne it / for he that hath the poſſeſſyon of lande wherunto any woman hath tytle of dower hathe good auctorytye as agaynſte her to take the profytes tyll ſhe requyre her dower / for euery woman that demaundeth dower affermeth the poſſeſſyon of the tenaunt as agaynſt hyr / ⁊ therfore all though ſhe recouer it by accyon ſhe leueth the reuercyon in hym agaynſt whom ſhe recouereth thoughe he be a dyſſeſour and bryngeth not the reuercyon by hyr recouerye to hym that hath ryght as other tenauntes for terme of lyfe do. And for this reaſon it is that the tenaũt in a wrytte of dower where the huſbande dyed ſeaſed yf he appere the fyrſt day may ſay to excuſe hym ſelfe of damages that he is and all tymes hath ben redy to yelde dower yf he had ben demaunded / and ſo he ſhall not be receyued to do in a wrytte of coſynage neyther in the caſe that thou remembreſt aboue / for in bothe caſes the tenauntes be ſuppoſed by the wrytte to be wronge doers / but it is not ſo in this caſe / and ſo me thynketh it clere that the feffe in this caſe ſhall neyther be bounde by lawe nor conſcyence to yelde damages fro the tyme that paſſed before the requeſt / but for the tyme after the requeſt is gretter doute / howe be it ſome thynke hym not there bounde to yelde damages bycauſe his tytle is good as is ſayd before / ⁊ that it is hyr defaute that ſhe brought not hyr accyon

¶ Doctour. As vnto the tyme before the requeſt I holde me content with thyne oppynyō ſo that he aſſygne the dower when he is requyred / but when he refuſeth to aſſygne it / then I thynke hym bounde in conſcyence to yelde damages for bothe tymes thoughe ſhe ſhall none recouer by the lawe. And fyrſt as for the tyme after the refuſell / yt appereth euydently that when he denyed to aſſygne her dower he dyd agaynſt cōſcyēce for he dyd not that of ryght he ought to haue done by the lawe / ne as he wolde ſhulde haue ben done to hym / and ſoo after the requeſt he holdeth hyr dower fro hyr wrongfully and ought in conſcyence to yelde damages therfore. And as to the defaute that thou aſſygneſt in hyr that ſhe toke not hyr accyō / that forceth lytell for accyons nede not / but where the partye wyll not do that he ought to do of ryght And for that he ought of ryght to haue done & dyd yt not / he can take none aduauntage / and then as to the damages before the requeſte me thynketh hym alſo bounden to paye theym / for when he was requyred to aſſygne dower and refuſed. It appereth that he neuer intended to yelde dower fro the begynnynge / and ſo he is a wronge doer in his owne conſcyence / & moreouer yf the huſbande dye ſeaſed the lawe is ſuche that yf the tenaunt refuſe to aſſygne dower when he ys requyred wherfore the woman bryngeth a wrytte of dower agaynſte hym / that in that caſe the woman ſhall recouer damages as well for the tyme before the requeſte as after / and yet he ought not in that caſe after thyne oppynyon to haue yelded damages yf he had ben redy to aſſygne dower when yt was demaunded / and ſoo me thynketh here.

¶ Student. The cauſe in that caſe that thou haſte put is for that the ſtatute is generall that the demaundant ſhall recouer damages where the huſbande dyed ſeaſed / ⁊ that ſtatute hathe ben alwaye conſtrued that where the tenaunt maye not ſaye that he is and hath ben alwaye redy to yelde dower. ⁊c. that the demaundaunt ſhall recouer damages fro the dethe of hyr huſbande. But in this caſe there ys no lawe of the realme that helpeth for the demaundaunt neyther comon lawe nor ſtatute / and ferthermore thoughe it myght be proued by his refuſell that he neuer entended fro the dethe of the huſbande to aſſygne hyr dower yet that proueth not / but that he had good ryght to take the profytes of hyr thyrde parte for the tyme as well as he had of his owne two partes tyll requeſte be made as ys a fore ſayd / and ſo me thynketh that not withſtandynge the denyer he ys not bounde to yelde damages in this caſe but fro the tyme of the requeſte / and not for the tyme before.

¶ Doctoure. For thys tyme I am contente with thy reaſon.

¶ The.xii.queſtyon of the ſtudent.

The.xiiii.chapytre.

¶ Student. A man ſeaſed of certayne landes knowynge that a nother hathe good ryght and tytle to theym leuyeth a fyne with proclamacyō to the entent he wold extyncte the ryght of the other man/and the other man maketh no clayme within the. v. yeres/whether maye he that leuyed the fyne holde the lande in conſcyence as he maye do by the lawe. ¶ Doctoure. By this queſtyon it ſemeth that thou doſt agre that yf he that leuyeth the fyne had no knowlege of the other mannes ryght/that his ryght ſholde then be extyncted by the fyne in conſcyence.

¶ Student. ye verely/for thou dydeſt ſhewe a reaſonable cauſe why it ſholde be ſoo in oure fyrſte dyaloge in latyn the. xxiiii. chapytre as there appereth. But yf he that leuyeth a fyne and that wolde extyncte the ryght of a nother/knowynge that the other hath more ryght then he/then I doute therein/for I take thyne oppynyon in oure fyrſte dyaloge to be vnderſtande in conſcyence where he that wolde extyncte former ryghtes by ſuche a fyne with pro clamacyon knoweth not of any former tytle/ but for his more ſurtye yf any ſuche former ryght be he taketh the remedye that is ordeyned by the lawe. ¶ Doctoure. whether doſte thou meane in this caſe that thou putteſt nowe that he that hath ryght/knoweth of the fyne & wylfully letteth the.v.yere paſſe without clayme or that he knoweth not any thynge of the fyne. ¶ Student. I praye the let me knowe thyne eppynyon in bothe caſes & whether thou thynke that he that hath ryght be barred in eyther of the caſes by cõſcyẽce as he is by the lawe or not ¶ Doctour. I wyl with good wyll hereafter ſhewe the my mynde therein/ but at this tyme I pray the gyue a lytell ſparynge and procede nowe to ſome other queſtyon.

¶ The.viii.queſtyon of the ſtudent.

The.xv.chapytre.

¶ Student. A man ſeaſed of certayne landes in fee hath a doughter whiche is his heyre apperaunte/ the doughter taketh a huſbande and they haue yſſue the fader dyeth ſeaſed / and the huſbande as ſoone as he hereth of his dethe gothe towarde the lande to take poſſeſſyon / and before he can come there his wyfe dyeth / whether ought he to haue the lande in conſcyence for terme of his lyfe as tenaunt by the curteſye bycauſe that he hathe done that in hym was to haue had poſſeſſyon in his wyues lyfe ſo that he myght haue ben tenaunt by the curteſye accordynge to the lawe / or that he ſhall neyther haue yt by lawe nor conſcyence. ¶ Doctoure. ys yt clerely holden in the lawe that he ſhall not be tenaunt by the curteſye in thys caſe bycauſe he had not poſſeſſyon in dede. ¶ Student. ye verylye / and yet vpon a poſſeſſyon in lawe a woman ſhall haue hyr dower / but no man ſhall be tenaunt by the curteſye of lande without hys wyfe haue poſſeſſyon in dede. ¶ Doctoure. A man ſhall be tenaunte by the curteſye of a rente thoughe hys wyfe dye before the daye of payment / and in lyke wyſe of an aduouſon thoughe ſhe dye before the auoydaunce.

¶ Student. That ys trouthe / for the olde cuſtome and maxyme of the lawe ys / that he ſhall be ſoo / but of lande there ys no maxyme ſerueth hym but hys wyfe hathe poſſeſſyon in dede. ¶ Doctoure. And what ys the reaſon that there ys ſuche a maxyme in the lawe of the rente and of the aduouſon rather then of lande when the huſbande dothe as moche as in hym ys to haue poſſeſſyon and can not.

¶ Student. Some aſſygne the reaſon to be bycauſe yt ys ympoſſyble to haue poſſeſſyon in dede of a rente or of a vouſon before the daye of payment of the rente / or before the avoydaunce of the aduouſon.

¶ Doctoure. And ſoo yt ys impoſſyble that he ſhall haue poſſeſſyon in dede of lande yf hys wyfe dye ſo ſoone that he maye not by poſſybylytye come to the lande after hyr faders dethe / and in hyr lyfe as this caſe ys.

¶ Student. The lawe ys ſuche as I haue ſhewed the before / and I take the very cauſe to be for that there ys a maxyme ſerueth for the rente and the aduouſon / and not for the landes as I haue ſayde before / and as yt ys ſayde in the .viii. chapytre of oure fyrſte dyaloge / yt ys not alwaye neceſſarye to aſſygne a reaſon or conſyderacyon why the maxymes of the lawe of Englande were fyrſt ordeyned and admytted for maxymes / but yt ſuffyſeth that they haue ben alway taken for lawe ⁊ that they be neyther contrarye to the lawe of reaſon nor to the lawe of god as this maxyme is not / and therfore yf the huſbande in this caſe be not holpen by conſcyence he can not be holpen by the lawe. ¶ Doctour. And yf the lawe helpe hym not conſcyence can not helpe hym in this caſe / for conſcyence muſt alway be grounded vpon ſome lawe / and it can not in this caſe be grounded vpon the lawe of reaſon nor vpon the law of god for it is not dyrectly by thoſe lawes that a man ſhall be tenaunt by the curteſye / but by the cuſtome of the realme. And therfore if that cuſtome helpe hym not he can nothynge haue in thys caſe by conſcyence / for conſcyence neuer reſyſteth the lawe of man nor addeth nothynge to it / but where the lawe of man is in yt ſelfe dyrectly agaynſt the lawe of reaſon or the lawe of god / and then properlye it can not be called a lawe but a corrupcyon / or where the generall groundes of the lawe of man worketh in any pertyculer caſe agaynſte the ſayd lawes as yt may do / and yet the lawe good as it appereth in dyuers places in our fyrſt dyaloge / or elles where there ys noo lawe of man prouyded for hym that hath ryght to a thynge by the lawe of reaſon or by the lawe of god. And the ſomtyme there ys remedye gyuen to execute that in conſcyence / as by a ſub pena but not in all caſes / for ſomtyme yt ſhall be referred to the conſcyence of the partye and vpon this grounde / that is to ſaye / that when there is no tytle by the comon lawe that there is no tytle by conſcyence / there be dyuers other caſes wherof I ſhall put ſome for an example as if a reuercyon be graūted vnto one but there is none atturnament / or yf a newe rente be graunted by worde without dede there is no remedye by conſcyēce oneles the ſayd grauntes were made vpon conſyderacyons of money or ſuche other / and in lyke wyſe where he that ys ſeaſed of landes in fee ſymple maketh a wyll therof the wyl is voyde in conſcyence bycauſe the grounde ſerueth not for hym wherby the conſcyence ſholde take effecte / that is to ſay / the lawe and yf the tenaūt make a feffement of the lande that he holdeth by pryorytye and taketh eſtate agayne & dyeth his heyre within age / the lorde of whome the lande was fyrſte holden by a pryorytye ſhall haue noo remedye for the body by conſcyence / for the lawe that fyrſte was with hym ys nowe agaynſte hym / and therefore conſcyence ys alteryd in lyke wyſe as the lawe alteryth / and dyuers and many caſes lyke be in the lawe / that were to longe to reherce nowe. And thus me thynketh that yf the lawe be as thou ſayeſt the huſbande in this caſe hathe neyther ryght by lawe nor conſcyence.

¶ The .xiiii. queſtyon of the ſtudent.

The .xvi. chapytre.

¶ Student. A rente ys graunted to a man in fee to perceyue of two acres of lande / and after the grauntoure enfeffeth the grauntee of one of the ſayde acres / whether ys the hoole rente extyncte thereby in conſcyence as yt ys in the lawe. ¶ Doctoure. Thy caſe ys ſomwhat vncertayne / for yt appereth not whether the grauntoure enfeffed hym on truſte / or that he gaue the acre to hym of his mere mo-vpon to the vſe of the ſayd feffe / or elles that the feffement was made vpon a bargeyne / & yf it were but onely a feffement of truſt / then I thynke the hoke rente abydeth in conſcyence thoughe yt be extyncted in the lawe / and fyrſt that yt contynueth in that caſe in conſcyence / for that parte that the grauntee hath to the vſe of the grauntoure / yt ys euydent / for he maye not take the profytes of the lande / and yt ys agaynſt conſcyence that he ſholde leeſe bothe / & in lyke wyſe yt abydeth in conſcyence for the acre that remayneth in the handes of the grauntoure / for there was a defaute in the grauntoure that he wolde make the feffement to the grauntee as well as there was in the grauntee to take yt. And yt ys no conſcyence that of hys owne defaute he ſholde take ſo grete auayle to be dyſcharged of the hocke rente ſeynge that the feffement was to hys owne vſe.

And yf the feffement were made vpon a bargeyne and a contracte bytwene theym / then yt ys to ſe whether they remembred the rente in theyr bargeyne / or that they remembred yt not / and yf they remembed yt in theyre bargayne & contracte / then conſcyence muſte folowe the bargeyne / as thus yf they agreed that the grauntee ſholde haue the rent after the porcyon in the other acre then by conſcyence he ought to haue it thoughe it be extyncted in the lawe. And yf they agreed that the hoole rente ſhold be extyncte ⁊ made theyr price accordyng then it is extyncte in lawe and conſcyence / ⁊ if they clerely forgete it and made no mencyon of it / or for lacke of connynge toke the lawe to be that it ſholde contynewe in the other acre after the porcyon and made theyr pryce accordynge / ponderynge onely the value of the acre that was ſolde: then me thynketh it doth contynewe in conſcyence after the porcyon / and if the feffement were made to the vſe of the grauntee / then it ſemeth the hole rent is extyncte in lawe and conſcyence. ¶ Student. Then take that to be the caſe / that is to ſay / that the feffement was made to the vſe of the grauntee.

¶ Doctoure. what ys then thyne oppynyon. therein. ¶ Student. That the rente ſholde abyde in conſcyence after the porcyon not withſtandynge it be extyncte in the lawe. ¶ Doctour. Then ſhewe me thyne oppynyon in thys that I ſhall aſke the / Of what lawe is it that grauntes of rente and of ſuche other profytes out of landes maye be made and that they ſhall be good and effectuell to the grauntees/ whether is it by the lawe of reaſon or by the lawe of god or by the cuſtome and lawe of the realme. ¶ Student. I thynke yt ys by the lawe of reaſon/ for by the ſame reaſon that a mā may gyue away all his landes he maye as it ſemeth gyue awaye the profytes thereof or graunte a rente oute of the lande yf he wyll. ¶ Doctoure. But then by what lawe ys it that a man maye gyue away his landes/ I trowe by none other lawe but by the cuſtome of the realme/ for by ſtatute all alyenacyons and gyftes of landes may be prohybyte/ and thē that reaſon proueth not that grauntes of the profytes of lande or of a rente ſholde be good bycauſe he maye alyene the lande/ yf alyenacyons of lande be by cuſtome and not by the lawe of reaſon as I ſuppoſe yt ys/ wherof I touched ſomwhat in our fyrſt dyaloge in latyn the .xix. chapytre. And alſo yf grautes ſhold haue theyr effecte by the lawe of reaſon then reaſon wolde that they ſholde be good by the onely worde of the grauntoure as well as by his dede/ ⁊ that ys not ſo for without dede the graunte of rente ys voyde in the lawe and ſoo me thynketh that grauntes haue theyr effecte onely by the lawe of the realme.

¶ Student. Admyt it to be ſo/ what meaneſt thou thereby. ¶ Doctoure. I ſhall ſhewe the hereafter as I ſhall ſhewe the the cauſe why I thynke the rente is extyncte in conſcyence as well as in lawe. And fyrſt as I take it the reaſon why it is extyncte in the lawe ys bycauſe the rente by the fyrſt graunte was goynge out of bothe acres/ and was not goynge parte out of the one acre and parte out of the other / but the hoole rente was goynge out of bothe / and then when the grauntee of his owne folye wyl take eſtate in the one acre whereby that acre ys dyſcharged / then the other acre alſo muſte be dyſcharged onleſſe yt ſholde be apporcyoned & the lawe wyl not that any apporcyōment ſholde be in that caſe/ But rather in as moche as the partye hathe by hys owne acte dyſcharged the one acre/ the lawe dyſchargeth alſo the other/ rather then to ſuffre the other acre to be charged contrarye to the forme of the graunte/ for thys rente begynneth all by the acte of the partye and ys called a rente agaynſt comon ryght. wherefore yt ys not fuuoured in the lawe as a rente ſeruyce ys / and then me thynketh that for as moche as yt is not grounded by the lawe of reaſon that grauntes of rent ſholde be made oute of lande / but by the cuſtome and lawe of the realme / as J haue ſayd before / that ſoo in lyke wyſe yt remayneth to the lawe and cuſtome of the realme to determyne howe longe ſuche rentes ſhall contynue / and when the lawe Jugeth ſuche rentes to be voyde that ſoo dothe conſcyence alſo / excepte the Jugement of the lawe be agaynſt the lawe of reaſon or the lawe of god / as yt ys not in thys caſe / ſoo that yf he that taketh the feffement hathe profyte by the feffement / and knoweth that he hathe ſuche a rente oute of the lande / and that hys purchace ſhold extyncte it: for thē he aſſenteth to the law whereto he was not compelled and that ys hys owne acte and hys owne defaute ſoo to doo / whiche ſhall extyncte hys hocke rente as well in conſcyence as in the lawe. But yf he haue no profyte of the lande or be ygnoraunt that he hath ſuch a rent out of the lande which is called ygnoraunce of the dede/or yf he be ygnoraunt that the lawe wolde extyncte hys hoole rente thereby/whiche ys called ygnoraunce of the lawe/then me thynketh yt remayneth in conſcyence after the porcyon. ¶Student. ygnoraunce of the lawe or of the dede helpeth not/but in fewe caſes in the lawe of Englande.

¶Doctoure. And therefore yt muſt be reformed by conſcyence/that ys to ſay/by the lawe of reaſon/for when the generall maxymes of the lawe be in any pertyculer caſes agaynſt the lawe of reaſon as thys maxyme ſemeth to be bycauſe it excepteth not theym that be ygnoraunt though yt be an ygnoraunce invyncyble then do they not agre with the lawe of reaſon.

¶Student. Me thynketh that ygnoraunce in this caſe helpeth lytell/for when a man byeth any lande or taketh yt of the gyfte of any other he taketh yt at hys peryll ſo that yf the tytle be not good ygnoraunce can not helpe: for the byer muſt beware what he byeth/and ſo in this caſe yf the takynge of the one acre ſholde extyncte the hoole rente in conſcyence yf he were not ygnoraunt/ſo me thynketh yt ſholde in lyke wyſe extyncte it alſo thoughe he be ygnoraunt of the lawe or of the dede / for euery man muſt be cõpelled to take notyce of his owne tytle: and out of what lande his rente ys goynge / and ſoo me thynketh ygnoraunce ys but lytell to be conſydered in this caſe. ¶ Doctoure. yf a man bye lande or take it of the gyfte of a nother it is reaſon that he take yt with the peryll thoughe he be ygnoraunt that a nother hathe ryght / for yt were not ſtandynge with reaſon that his ygnoraunce ſholde extyncte the ryght of a nother / but in this caſe there is noo doute of the ryght of the lande / but all the doute ys howe the rent ſhall be ordered in conſcyence yf he that hathe the rente take parte of the lande / and therin is grete dyuerſytye bytwene hym that ys ygnoraunte and hym that knoweth the lawe / and knoweth alſo that he hath a rent out of that lande & other / for I put caſe that he aſked counſayle of the grauntour hym ſelfe therin and he ſayenge as he thought tolde hym that the takynge of the one acre ſholde not extyncte the ryght but for the porcyon / and ſoo he thynkynge the lawe to be / toke the other acre of his gyfte. Is yt not reaſonable in that caſe that that ygnoraunce ſholde ſaue the rente in conſcyence.

¶ Student. yes / for there the grauntour hymſelfe ys partye to his ygnoraunce and is in maner the cauſe thereof. ¶ Doctoure. And me thynketh all ys one yf any other had ſhewed hym ſo or yf he had aſked no counſayle at all / for me thynketh yt ſuffyſeth in this caſe that he be ygnoraunt of the lawe / for why / it ys more harde in thys caſe to proue that the rente ſholde be extyncte in conſcyence thoughe he knowe yt ſhall be extyncted in the lawe / then to proue that yt contynueth in conſcyence after the porcyon yf he be ygnoraunte / and thou thy ſelfe werte of the ſame oppynyon as yt appereth in the begynnynge of this preſent chapytre / but if that oppynyon were true / It wold be harde to proue but that the ſayde generall maxyme were holly agaynſte reaſon / and then yt were Voyde / but I haue ſuffycyently a͂ſwered therto as me ſemeth and that yt ys extyncte in the lawe / and alſo in conſcyence / excepte ygnoraunce helpe yt to be opporcyonyd. And moreouer for as moche as apporcyo͂ment ys ſuffered in the lawe where parte of the lande dyſcendeth to the grauntee bycauſe noo defaute can be aſſygned in hym / ſo me thynketh noo defaute can be aſſygned in hym in conſcyence when he is ygnoraunt of the lawe or of the dede / thoughe ſuche ygnoraũce do not excuſe in the lawe.

¶ Student. I am contente with thyne oppynyon in this behalfe at this tyme.

¶ The.xv.queſtyon of the ſtudent.
The.xvii.chapytre.

¶ Student. A man graunteth a rente charge out of two acres of lande / and after the grauntour enfeffyth Henry herte in one of the ſayde two acres to the vſe of the ſayde Henry herte and of hys heyres / and after the ſayde Henry herte entendynge to extyncte all the rente cauſeth the ſayd acre to be recouered agaynſt hym to hys owne vſe in a wrytte of entrye in the poſte in the name of the grauntee and of other after the comõn courſe / the graũtee not knowynge of yt / and by force of the ſayd recouerye the other demaundauntes entre and dye lyuynge the grauntee ſoo that the grauntee ys ſeaſed of all by the ſuruyuoure to the vſe of the ſayde Henry herte / whether ys the ſayde rente extyncte in conſcyence in parte or in all. or in no parte. ¶ Doctoure. I am in doute of the lawe in thys caſe. ¶ Student. In what poynte. ¶ Doctoure. whether the hoole rente be goynge oute of the acre that remayneth in the handes of the grauntoure bycauſe the grau͂tee cometh to the lande by waye of recouerye/ or that yt ſhall be extyncte in the lawe/ but after the porcyon bycauſe the grauntee hath not the acre to his owne vſe/ or that the hoole rent ſhall be extyncte in the lawe. ¶ Student. The rente can not be hoole goynge out of the acre that the grau͂tour hath/ for this recouerye ys vpon a fayned tytle/ and the grauntour bycauſe he is ſtraunge to yt ſhall be well receyued to falſyfye yt. But yf the recouerye had ben vpon a true tytle/ then yt had ben as thou ſayeſt/ for yf the grauntee recouer the one acre agaynſt the grauntoure vpon a true tytle/ the grauntour ſhall pay the hoole rente out of that lande that remayneth in his hande/ and as to the vſe yt maketh no matter to the grauntoure as to the lawe in whom the vſe be/ for the poſſeſſyon withoute the vſe extynguyſſheth the hoole rente as agaynſt hym in the lawe as well

as if the poſſeſſyon and vſe were bothe ioyned togyder in the grauntee. ❡ Doctoure. Then me thynketh that the ſayd Henry herte ys bounden in conſcyence to pay the grauntee the rente after the porcyon of that acre that was recouered/ for yt can not ſtande with conſcyence that he ſholde keepe his rente and haue no profytes of the lande. ❡ Student. Then of whome ſhall he haue the other porcyon of hys rente.
❡ Doctoure. Is the lawe clere that the acre that the grauntoure hathe ſhall be in this caſe dyſcharged in the lawe. ❡ Student. I take the lawe ſoo. ❡ Doctoure. And what in conſcyence. ❡ Student. As agaynſte the grauntour me thynketh/ alſo yt ys extyncte in conſcyence for the reaſon that thou haſte made in the laſt chapytre/ for yt ys all one in conſcyence in this caſe as agaynſte the grauntoure/ whether the recouerye were to the vſe of the grauntee or not/ ſpecyallye/ ſeynge that the grauntoure ys not pryuye to the recouerye/ for the vnytye of poſſeſſyon is the cauſe of extynguyſſhment of the rent agaynſt the graūtour bothe in lawe & conſcyēce where ſo euer the vſe be/ but yf the grauntoure had ben pryuye to the cauſe of the

extynguyſſhment as he was in the caſe that I put in the laſt chapytre where the grauntour enfeffed the graũtee of one of the acres to the vſe of the grauntee there it is not extyncte in conſcyence in that acre that remayneth in the handes of the graũtour though it be extyncted in the lawe/ bycauſe he was pryuye to the extynguyſſhmẽt hym ſelfe/ but he is not ſo in this caſe ⁊ therfore it is extyncte agaynſt hym in lawe ⁊ cõſcyence. And therfore me thynketh that the graũtee ſhall in cõſcyence haue the hole rent of the ſayd Henry herte that cauſed the ſayd recouery to be had ĩ his name: for in hym was al the defaute/ but it is to be vnderſtande that in all the caſes where it is ſayd before in this chapytre or in the chapytre nexte before that the rent is extyncte in the lawe ⁊ not in conſcyence that in ſuche caſe all the remedyes that the partye myght fyrſt haue had for the rent at the comon lawe by dyſtreſſe aſſyſe or otherwyſe are determyned/ ⁊ the partye that ought to haue the rent in cõſcyence ſhalbe dryuẽ to ſue for his remedye by ſub pena. ¶ Doctour. I am contente with thyne conceyte in this matter for this tyme.

¶ The .xvi. queſtyon of the ſtudent.

The .xviii. chapytre.

¶ Student. A vylleyne is graunted to a mã for terme of lyfe / the vylleyne purchaſeth landes to hym ⁊ to his heyres the tenaũt for terme of lyfe entreth / in this caſe by the lawe he ſhall enioye the landes to hym ⁊ to his heyres / whether ſhall he do ſo in lyke wyſe in conſcyence.

¶ Doctoure. Me thynketh it fyrſte good to ſe whether it may ſtande with cõſcyence that one man may clayme a nother to be his vylleyne / ⁊ that he may take fro hym his landes ⁊ goodes ⁊ put his body in pryſon yf he wyll / yt ſemeth he loueth not his neyghbour as hym ſelfe that doth ſo to hym.

¶ Studẽt. That lawe hath ben ſoo longe vſed in this realme ⁊ in other alſo / ⁊ hath ben admytted ſo longe in the lawes of this realme ⁊ of dyuers other lawes alſo ⁊ hath ben affermed by buſſhops abbots pryours ⁊ many other mẽ bothe ſpyrytual ⁊ tẽporal: which haue takẽ aduaũtage by the ſayd lawe ⁊ haue ſeaſed the landes ⁊ goodes of theyr vylleyns therby ⁊ call it theyr ryght enherytaunce ſo to do that I thynke it not good / nowe to make a doute ne to put it ĩ argumẽt whether it ſtãde with cõſcyẽce or not / ⁊ therfore I pray the admittyng the law in that behalfe to ſtãde with cõſcyẽce ſhewe me thyne oppynyõ in the queſtyõ that I haue made

❡Doctour. Is the lawe clere that he that hath the vylleyne but onely for terme of lyfe ſhall haue the landes that the vylleyne purchaſeth in fee to hym & to his heyres. ❡Student. ye veryly I take it ſo. ❡Doctour. I wolde haue taken the lawe otherwyſe / for yf a ſeygnourye be graunted to a man for terme of lyfe and the tenaunt atturne / and after the lande eſchete & the tenaunt for terme of lyfe entre he ſhal haue there none other eſtate in the lande then he had in the ſeygnourye / & me thynketh that yt ſholde be lyke lawe in thys caſe / and that he ought to haue in the lande but ſuche eſtate as he hathe in the vylleyne. ❡Student. The caſes be not lyke / for in that caſe of the eſchete the tenaunt for terme of lyfe of the ſeygnourye hath the landes in the lyeu of the ſeygnourye / that ys too ſaye / in the place of the ſeyguourye & the ſeygnourye ys clerelye extyncte / but in this caſe he hath not the lande in the lyeu of the vylleyne / for he ſhall haue the vylleyne ſtyll as he had before / but he hath the lande as a profyte come by meanes of the vylleyne whiche he ſhal haue in lyke caſe as the vylleyne had theym / that is to ſay / of all goodes and catalles he ſhal haue the hole propertye and of a leaſe for terme of yeres he ſhall haue the hole terme / and for terme of lyfe he ſhall haue the ſame eſtate / and of an eſtate tayle that the Vylleyne hath / the lorde ſhall haue the lande durynge the lyfe of the Vylleyne / and of lande in fee ſymple the lorde ſhall haue the hole fee ſymple / all though he had the Vylleyne but onely for terme of yeres ſo that he entre or ſeaſe before the Vylleyn alyen for elles he ſhall haue nothynge. ¶ Doctour. Verylye and yf the lawe be ſo / I thynke conſcyence foloweth the lawe therin / for admyttynge that a man may with conſcyence haue another man to be his Vylleyne / the Jugement of the lawe in this caſe ys neyther agaynſt the lawe of reaſon nor agaynſt the lawe of god / and therfore conſcyence muſte folowe the lawe of the realme / but I pray the let me make a lytell dygreſſyon to here thyne oppynyon in a nother caſe ſomewhat perceyuynge to thy queſtyon / and yt ys this / yf an executour haue a Vylleyne that his teſtatoure had for terme of yeres and he purchaſeth landes in fee ⁊ the executoure entryth in to the lande / what eſtate hath he by his entre ¶ Student. A fee ſymple / but that ſhall be to the behoue of the teſtatoure and ſhall be an aſſeſſe in his handes. ¶ Doctoure. well then I am contentyd with thy conceyte at thys tyme in this caſe and I praye the procede to a nother queſtyon. ¶ Student. For as moche as it appereth in this caſe and in ſome other before that the knowlege of the lawe of Englande is ryght neceſſary for the good orderynge of conſcyence. I wolde here thyne oppynyon yf a man myſtake the lawe what daunger it is in conſcyence for the myſtakynge of yt. ¶ Doctoure. I praye the put ſome caſe in certayne thereof that thou douteſt in/ ¶ I wyll with good wyll ſhewe the my mynde therin for elles yt wyll be ſomwhat longe or it can be playnly declared/ & I wolde not be tedyous in thys wrytynge.

¶ The.xvii.queſtyon of the ſtudent.

The.xix.chapytre.

¶ Student. A man hath a vylleyne for terme of lyfe the vylleyne purchaſeth landes in fee as in the caſe in the laſt chapytre and the tenaunt for terme of lyfe entryth and after the vylleyn dyeth/ he in the reuercyon pretendynge that the tenaunt for terme of lyfe hath nothynge in the lande but for terme of lyfe of the vylleyne/ aſketh counſayle of one that ſheweth hym that he hath good ryght to the lande and that he may lawfully entre/ and thrughe that counſayle he in the reuercyon entreth/ by reaſon of whiche entrye grete ſutes and expences folowe to the grete hurte of bothe partyes/ what daunger is this to hym that gaue the counſayle. ¶ Doctoure. whether meaneſt thou that he that gaue the counſayle gaue it wyttynglye agaynſte the lawe/ or that he was ygnoraunte of the lawe. ¶ Student. That he was ygnoraunt of the lawe for if he knew the lawe ⁊ gaue counſayle to the contrarye I thynke hym bounde to reſtytucyon bothe to hym agaynſt whom he gaue the counſayle/ ⁊ alſo to his clyent yf he wolde not haue ſued but for his cou̅ſayle/ of all that they be dampnyfyed by it. ¶ Doctour. Then wyl I yet ferther aſke the this queſtyon whether he of whom he aſked counſayle gaue hym ſelfe to lernyng ⁊ to haue knowlege of the lawe after his capacytye or that he toke vpon hym to gyue counſayle and toke no ſtudye competent to haue lernynge/for yf he dyd ſoo/ I thynke he be bounde in conſcyence to reſtytucyon of all tha coſtes and damages that he ſuſteyned to whom he gaue counſayle/yf he wolde not haue ſued but thrugh his counſayle. And alſo to the other partye/but yf a mā that hath taken ſuffycyent ſtudye in the lawe/myſtake the lawe in ſome poynte that ys harde to come to the knowlege of/he is not bounden to ſuche reſtytucyon for he hath done that in hym is/but yf ſuche a man knowynge the lawe gyue counſayle agaynſte the lawe/he is bounden in conſcyence to reſtytucyō of coſtes and damages as thou haſt ſayd before/and alſo to make amendes for the vntrouthe. ¶ Student. what yf he aſke counſayle of one that he knoweth ys not lerned and he gyueth hym counſayle in thys caſe to entre by force whereof he entryth. ¶ Doctoure. Thē be they bothe bounde in conſcyence to reſtytucyon/that ys to ſaye/the partye yf he be ſuffycyent and elles the counſayloure bycauſe he aſſented and gaue counſayle to the wronge. ¶ Student. But what ys the counſayloure in that caſe bounden to/to hym that he gaue counſayle to. ¶ Doctoure. To nothynge for there was as moche defaute in hym that aſked the counſayle as in hym that gaue it / for he aſked counſayle of hym that he knewe was ygnoraunt / and in the other was defaute for the preſumpcyon that he wolde gyue counſayle in that he was ygnoraunt in. ¶ Student. But what yf he that gaue the counſayle knewe not but that he that aſked it had truſte in hym that he wolde gyue hym good counſayle & that he aſked counſayle for to order well hys conſcyence howe be yt that the truthe was not ſoo. ¶ Doctoure. Then ys he that gaue the counſayle bounden to offer to the other amendes / but yet the other maye not take it in conſcyence. ¶ Student. That were ſomewhat peryllous for haply he wyll take yt thoughe he haue noo ryght to yt / excepte the worlde be well amended.

¶ Doctour. what thynkeſt thou in that amendement. ¶ Student. I truſt euery man wyll doo nowe in this worlde as they wolde be done to / ſpeke as they thynke / reſtore where they haue done wronge / refuſe money yf they haue no ryght to yt though it be offered theym / do that they oughte to doo by conſcyence / thoughe they can not be compelled to yt by no lawe and that none wyll gyue counſayle but that they ſhall thynke to be accordynge to conſcyence/ and yf they doo/to do that they can to reforme yt and not to entermyt theym ſelfe with ſuche matters as they be ygnoraunt in/but to ſende theym that aſke the counſayle to other that they ſhall thynke be more connynge then they are.

¶ Doctour. yt were very well yf yt were as thou haſt ſayd/but the more pytye ys/yt ys not alway ſo/and ſpecyally there ys grete defaute in gyuers of coūſayle/for ſome for theyr owne lucre and profyte gyue counſayle to comforte other to ſue that they knowe haue noo ryght/ but I truſte there be but fewe of theym. And ſome for drede/ſome for fauour/ſome for malyce/and ſome vpon confederacyes & to haue as moche done for theym a nother tyme do hyde the trouthe. And ſome take vpon theym to gyue counſayle in that they be ygnoraunt in/and yet when they knowe the truthe wyll not with drawe that they haue myſdone/for they thynke yt ſholde be gretely to theyr rebuke/and ſuche perſones folowe not this counſayle that ſayth. That we haue vnaduyſedly done let vs with good aduyce reuoke agayne. ¶ Student. And yf a man gyue counſayle in thys realme after as hys lernynge and conſcyence gyueth hym and regardeth not the lawes of the realme gyueth he good counſayle. ¶ Doctoure. If the lawe of the realme be not in that caſe agaynſt the lawe of god nor agaynſt the lawe of reaſon he gyueth not good counſayle / for euery man ys bounde to folowe the lawe of the countrey where he is / ſo yt be not agaynſte the ſayd lawes / and ſoo maye the caſe be that he maye bynde hym ſelfe to reſtytucyon.

¶ Student. At thys tyme I wyll no ferther trouble the in thys queſtyon.

¶ The .xviii. queſtyon of the ſtudent.
The .xx. chapytre.

¶ Student. If a mã of his mere mocyon gyue landes to Henry herte and to his heyres by indenture vpon condycyon that he ſhall yerely at a certayne daye paye to Iohan at ſtyle out of the ſame lande a certayne rente / and yf he doo not that then it ſhall be lawefull to the ſayde Johan at ſtyle to entre.&c. yf the rente in this caſe be not payde to Johan at ſtyle / whether may the ſayd Johan at ſtyle entre in to the landes by conſcyence thoughe he may not entre by the lawe. ¶ Doctoure. Maye he not entre in this caſe by the lawe ſyth the wordes of the indenture be that he ſhall entre. ¶ Student. No veryly for there ys an auncyent maxyme in the lawe that no man ſhall take aduauntage of a condycyon but he that ys partye or pryuye to the condycyon / and thys man ys not partye nor pryuy / wherfore he ſhall haue none aduauntage of it. ¶ Doctour. Thoughe he can haue none aduauntage of it as partye yet bycauſe it apperyth euydently that the intente of the gyuer was that yf he were not payde of the rent that he ſholde haue the lande. It ſemeth that in conſcyence he ought to haue yt thoughe he can not haue it by the lawe. ¶ Student. In many caſes the intente of the partye ys voyde to all intentes yf yt be not grounded accordynge to the lawe. And therfore yf a man make a leaſe to another for terme of lyfe / and after of hys mere mocyon he cōfermeth his eſtate for terme of lyfe/to remayne after his dethe to another and to his heyres in this caſe that remayndre ys voyde in lawe and conſcyence/for by the lawe there can no remayndre depeude vpō no eſtate but that the ſame eſtate begynneth at the ſame tyme that the remayndre dothe/and in this caſe the eſtate began before and the confyrmacyon enlarged not his eſtate nor gaue hym no newe eſtate/but yf a leaſe be made to a mā for terme of a nother mannes lyfe and after the leſſoure onely of his mere mocyon cōfermeth the lande to hys leſſ for terme of hys owne lyfe the remayndre ouer in fee/this ys a good remayndre in lawe and cōſcyence/and ſome thynketh the intente of the partye ſhall not be regarded in this caſe. ¶ Doctoure. And in the fyrſte caſe that thou haſt put me thynketh thoughe it paſſe not by way of remayndre that yet yt ſhall paſſe as by way of graunt of the reuercyon/for euery dede ſhall be taken moſt ſtronge agaynſt the grauntour and the takynge of the dede in thys caſe ys an atturnament in it ſelfe. ¶ Student That can not be for he in the remayndre is not partye to the dede and therfore it can not be taken by waye of graunte of the reuercyon/for no graunte can be made but to hym that ys partye to the dede excepte it be by way of remayndre/and therfore yf a man make a leaſe for terme of lyfe/and after the leſſoure graunte to a ſtraūger that the tenaunt for terme of lyfe ſhall haue the lande to hym and to hys heyres/that graunte ys voyde yf yt be made onely of hys mere mocyon. And in lyke wyſe yf a man make a leaſe for terme of lyfe and after graunte a reuercyon to one for terme of lyfe the remayndre ouer in fee/and the tenaunt atturneth to hym that hath the ſtate for terme of lyfe onely/intendynge that he onely ſholde haue aduauntage of the graunte hys intente ys voyde and bothe ſhall take aduauntage thereof/and the atturnament ſhall be taken good accordynge to the graunte/and ſo in thys caſe thoughe the feffoure entendyd that yf the rente were not payde that the ſtraunger ſholde entre/yet bycauſe the lawe gyueth hym no entre in that caſe that intente ys voyde and the ſtraunger ſhall neyther entre in to the lande by lawe nor conſcyence. ¶. Doctoure. what ſhall then be done with the lande as thou thynkeſt after the condycyon broken. ¶. Student. I thynke that the feffoure in thys caſe maye lawfully rentre for when the feffement was made vpon condycyon that the feffe ſholde pay a rent to the ſtraūger in the wordes ys included in the lawe that yf the rente were not payde to the ſtraunger that the feffoure ſholde rentre for tho wordes/ vpon condycyon/ implye ſo moche in the lawe thoughe yt be not expreſſed. And then when the feffoure wente ferther and ſayd that yf the rente were not payde that the ſtraunger ſholde entre/ thoſe wordes were voyde in the lawe/ and ſoo the effecte of the dede ſtode vpon the fyrſte wordes whereby the feffoure maye rentre in lawe and conſcyence: But yf the fyrſte wordes had not ben condycyonell I wolde haue holden yt the gretter doute. ¶ Doctoure. I pray the put the caſe therof in certayne with ſuche wordes as be not condycyonell that I maye the better perceyue what thou meaneſt therein.

¶ The.xix.queſtyon of the ſtudent.

The.xxi.chapytre.

¶ Student. A man maketh a feffemente by dede indented and by the ſame dede it is agreed that the feffe ſhall pay to.A.B.& to his heyres a certayne rente yerely at certayne dayes/and that yf he paye not the rente then yt ys agreed that.A.B.or hys heyres ſhall entre in to the lande/and after the feffe payeth not the rente/then the queſtyon ys who ought in conſcyence to haue this lande and rente. ¶ Doctour. Or we argue what conſcyence wyll/let vs know fyrſt what the lawe wyll therin. ¶ Student. I thynke that by the lawe neyther the feffoure ne yet the ſayde.A.B.ſhall neuer entre in to the lande in this caſe for not paymēt of the rent for there ys noo rentre in thys caſe gyuen to the feffour for not payment of the rente as there is in the caſe nexte before/and the entre that ys gyuen to the ſayd.A.B.for not payment therof ys voyde in the lawe bycauſe he ys eſtraūge to the dede as yt appereth in the nexte chapytre before. And therfore me thynketh that the gretteſt doute in thys caſe is to ſe to what vſe thys feffement ſhall be taken. ¶ Doctour. There appereth in this caſe as thou haſt put yt no conſyderacyon ne recompence gyuen to the feffour wherupon any vſe maye be deryuyed / and yf the caſe be ſo in dede and that the feffour declared neuer hys mynde therin / to what vſe ſhall it then be taken. ¶ Student. I thynke yt ſhall be taken to be to the vſe of the feffe as long as he payeth the rente / for there ys no reaſon why the feffe ſholde be buſyed with payment of the rente / hauynge nothynge for hys laboure / ne it may not cōuenyently be taken that the intent of the feffour was ſo / excepte he expreſſed yt / and then yt muſte be taken that he intended to recompence the feffe for the buſynes that he ſholde haue in the payment ouer / & by the wordes folowynge hys intente appereth to be ſo as me thynketh / for yf the rente were not payde he wolde that. A. B. ſholde entre / and ſe yt ſemeth he entended not to haue any vſe hym ſelfe and thus as me ſemeth thys caſe ſholde varye fro the comon caſe of vſes / that ys to ſay / yf a man ſeaſed of lande make a feffement therof / and it appereth not to what vſe the feffement was made thē yt ſhall be eaken to be to the vſe of the feffour excepte the contrarye can be proued by ſome bargeyne or other lyke / or that hys intent at the tyme of the lyuerey of ſeaſon was expreſſed that it ſholde be to the vſe of the feffe or of ſome other and then it ſhall go accordyng to hys intente / but in thys caſe me thynketh yt ſhall be taken that his intent was that yt ſholde fyrſte be to the vſe of the feffe for the cauſe before reherced excepte the contrarye can be proued / and ſo the knowlege of the intente of the feffour ys the greteſt certayntye for knowlege of the vſe in this caſe as me ſemeth / but when the feffoure gothe ferther and ſayth that yf the rente be not payde that then the ſayde .A.B. ſholde entre in to the lande / then yt appereth that hys intente was that the rente ſholde ceſſe and that .A.B. ſholde entre in to the lande / & thougthe he maye not by thoſe wordes entre in to the lande after the rules of the lawe and to haue the free holde / yet thoſe wordes ſeme to be ſuffycyent to proue that the intente of the feffoure was that he ſholde haue the vſe of the lande / for ſyth he had the rente to hys owne vſe and not to the vſe of the feffour ſo yt ſemeth he ſhall haue the vſe of the lande that is aſſygned to hym for not payment of the rente.

¶ Doctoure. But I am ſomwhat in doute whether he had the rente to hys owne vſe / for the intent of the feffour myght be that he ſhold paye the rente for hym to ſome other or ſome other vſe myght be appoynted thereof by the feffour. ¶ Student. If ſuche an entente can be proued then that intente muſt be obſerued/ but we be in the caſe to wytte to what vſe yt ſhall be taken yf the intente of the feffour can not be proued/ and then me thynketh it can not be otherwyſe taken but that it ſhall be to the vſe of hym to whome yt ſholde be payde/ for thoughe yt be called a rente yet yt ys no rente in the lawe/ ne in the lawe he ſhall neuer haue remedy for yt/ thoughe yt were aſſygned to hym and to his heyres without condycyon/ neyther by dyſtreſſe/ by aſſyſe/ by wrytte of annuytye nor otherwyſe/ but he ſhall be dryuen to ſue in the chauncerye for hys remedye/ and then when he ſuyth in the chauncerye he muſte ſurmyt that he ought to haue yt by conſcyence/ and that he can haue noo remedye for yt in the lawe. And then ſyth he hathe noo remedye to come to yt/ but by waye of conſcyence/ yt ſemeth yt ſhall be taken that when he hath recoueryd yt that he ought to haue it in conſcyence and that to hys owne vſe without the contrary can be proued/and yf the contrary can be proued and that the intent of the feffour was that he ſholde dyſpoſe yt for hym as he ſholde appoynte then hath he the rente in vſe to a nother vſe/& ſo one vſe ſholde be dependynge vpon another vſe whiche ys ſeldome ſene and ſhall not be intended tyll yt be proued/and ſo ſyth noo ſuche matter ys here expreſſed me thynketh the rent ſhall be taken to be to the vſe of hym that it ys payde to and that the lande in lyke wyſe that is appoynted to hym for not payment of the ſayd rente ſhall be alſo to hys vſe/howe thynkeſt thou wyll conſcyence therin. ¶ Doctoure. I thynke that as thou takeſt it conſcyence in thys caſe and the lawe be all one/for the lawe ſercheth the ſame thynge in thys caſe to knowe the vſe that conſcyence dothe/that ys to ſaye/the intente of the feffoure/and therfore I wolde moue the ferther in one thynge. ¶ Student. what ys that. ¶ Doctoure. That ſyth the intente of the feffour ſhall be ſo moche regarded in thys caſe why it ought not alſo to be as moche regarded in the caſe that ys in the laſt chapytre nexte before thys where the wordes be condycyonell and gyue the feffour a tytle of rentre/ for me thynketh that thoughe the feffour maye in that caſe rentre for the condycyon broken/ that yet after hys rentre he ſhalbe ſeaſed of the lāde after his entre to the vſe of hym to whom the lande was aſſygned by the ſayd indenture for lacke of payment of the rente/ bycauſe the intente of the feffour ſhall be taken to be ſo in that caſe as well as in this. And I pray the let me knowe thy mynde what dyuerſytye thou putteſt bytwene theym. ¶ Student. Thou dryueſt me nowe to a narowe dyuerſytye/ but yet I wyll anſwere the therein as well as I can. ¶ Doctour. But fyrſt or thou ſhewe me that dyuerſytye/ I praye the ſhewe me howe vſes began and why ſo moche lande hathe ben put in vſe in this realme as hath ben. ¶ Student. I wyll with good wyll.

¶ Howe vſes of lande fyrſte began/ and by what lawe & the cauſe why ſo moche lande ys put to vſe.

The.xxii.chapytre.

The.xxii.chapytre.

¶ Student. Vſes were reſerued by a ſecondary concluſyon of the lawe of reaſon in thys maner/ when the generall cuſtome of propertye wherby euery man knewe hys owne good fro hys neyghboures was brought in amonge the people. It folowed of reaſon that ſuche lãdes and goodes as a man had ought not to be taken fro hym but by hys aſſente or by order of a lawe/ and then ſyth yt ys ſoo that euery man that hathe landes hathe therby two thynges in hym/ that ys to ſay/ the poſſeſſyon of the lande whiche after the lawe of Englande ys called the franke tenement or the free holde/ and the other ys authorytye to take therby the profytes of the lande/ wherfore yt foloweth that he that hathe lande and intendeth to gyue onely the poſſeſſyon and free holde thereof to a nother/ and to kepe the profytes to hym ſelfe ought in reaſon and conſcyence to haue the profytes/ ſeynge there ys no lawe made to prohybyt/ but that in conſcyence ſuche reſeruacyon maye be made. And ſo when a man maketh a feffement to a nother and intendeth that he hym ſelfe ſhall take the profytes then that feffe is ſayde ſeaſed to hys vſe that ſo enfeffed hym/ that ys to ſay/

to the vſe that he ſhall haue the poſſeſſyon ⁊ freholde therof as in the lawe to that intente that the feffour ſhall take the profytes / and vnder thys maner as I ſuppoſe vſes of lande fyrſte began. ¶ Doctour. It ſemeth that the reſeruynge of ſuche vſe ys prohybyt by the lawe / for if a man make a feffement ⁊ reſerue the profytes or any parte of the profytes as the greſſe wood or ſuche other / that reſeruacyo͂ ys voyde in the lawe / ⁊ me thynketh it is al one that the law iugeth ſuch a thyng if it be done to be voyde / ⁊ that the lawe ꝓhybyteth that that thynge ſhal not be done. ¶ Studēt. Trouth it is that ſuche reſeruacyon is voyde in the lawe as thou ſayſt ⁊ that is by reaſo͂ of a maxym in the lawe that wylleth that ſuche reſeruacyon of parte of the ſame thyng ſhalbe iuged voyde in the lawe but yet the lawe doth not prohybyt that no ſuch reſeruacyo͂ ſhalbe made / but if it be made it iugeth of what effecte it ſhalbe that is to ſay that it ſhalbe voyde / ⁊ ſo he that maketh ſuche reſeruacyo͂ offendeth no lawe therby / ne breketh no lawe therby ⁊ therfore the reſeruacyon in co͂ſcyence is good / but if it were prohybyt by ſtatute that no man ſholde make ſuche reſeruacyon / ne that noo feffement of truſte ſholde be made /

but that all feffementes ſholde be to the vſe of hym to whom poſſeſſyon of the lande ys gyuẽ/ then the reſeruacyon of ſuche vſe agaynſte the ſtatute ſhold be voyde bycauſe it were agaynſt the lawe:& yet ſuche a ſtatute ſholde not be a ſtatute agaynſte reaſon bycauſe ſuche vſes were fyrſt grounded and reſerued by the lawe of reaſon/but yt ſholde preuent the lawe of reaſon & ſholde put away the conſyderacyon wherupon the lawe of reaſon was grounded before the ſtatute made. And then to thy other queſtyon/ ys to ſaye/why ſo moche lande hathe ben put in vſe/yt wyll be ſomwhat longe and peraduenture to ſome mā very tedyous to ſhewe all the cauſes pertyculerlye/but the very cauſe why the vſe remayneth to the feffe notwithſtādyng hys owne feffement or fyne and ſomtyme notwithſtandynge a recouerye agaynſt hym ys all vpon one cōſyderacyon after the cauſe and intente of the gyfte fyne or recouerye as is afore ſayd. ¶ Doctour. Though reaſon may ſerue that vpō a feffement a vſe may be reſerued to the feffour by the intent of the feffour agaynſt the forme of his gyfte as thou haſt ſayd before: yet I meruayle howe ſuche an vſe maye be re/

ſerued agaynſte a fyne that ys one of the hyghest recordes that ys in the lawe / and ys taken in the lawe of ſoo hyghe effecte that yt ſholde make an ende of all ſtryffes / or agaynſte a recouerye that ys ordeyned in the lawe for theym that be wronged to recouer theyr ryght by / & me thynketh that grete inconuenyence ⁊ hurte may folowe when ſuche recordes may ſo lyghtly be auoyded by a ſecrete intente or vſe of the partyes and by a nude and bare auerment and matter in dede / and ſpecyally ſyth ſuche a matter in dede may be alegged that ys not true wherby may ryſe grete ſtryfe bytwene the partyes & grete cõfuſyon and vncertayntye in the lawe / but neuertheles ſyth our intente ys not at thys tyme to treate of that matter I pray the touche ſhortly ſome of the cauſes why there hath ben ſo many perſones put in eſtate of landes to the vſe of other as there hathe ben / for as I here ſaye / fewe men be ſole ſeaſed of theyr owne landes. ¶ Student. there hath ben many cauſes therof / of the whiche ſome be put away by dyuers ſtatutes / and ſome remayne yet / wherfore thou ſhalte vnderſtãde that ſome haue put theyr lande in feffement ſecretlye to the intent that they that haue ryght to the lande ſholde not knowe agaynſt whome to brynge theyr accyon and that ys moche what remedyed by dyuers ſtatutes that gyue accyons agaynſte pernours or takers of the profytes. And ſomtyme ſuche feffementes of truſte haue ben made to haue mayntenaunce and berynge of theyr feffees/ whiche peraduenture were grete lordes or rukers in the countrey / and therefore to put awaye ſuche mayntenaunce treble damages be gyuen by ſtatute agaynſt theym that make ſuche feffementes for mayntenaunce / and ſomtyme they were made to the Vſe of mortmayn whiche myght then be made withoute forfeyture. But that ys put awaye by the ſtatute of Rycharde the ſeconde. And ſomtyme they were made to defraude the lordes of wardes / relyefes/ harryottes/ and of the landes of theyr Vylleyns / but thoſe poyntes be put awaye by dyuers ſtatutes made in the tyme of kyng Henry the .Vii. Sometyme they were made to auoyde execucyons Vpon ſtatutes ſtaple / ſtatute marchaunt/ and recognyſaunce / and remedye ys prouyded for that / that a man ſhall haue execucyon of all ſuche landes as any per ſone ys ſeaſed of to the vſe of hym that ys ſoo bounde at the tyme of execucyon ſuyd in the.xix.yere of kynge Henry the.vii.And yet remayne feffementes/fynes/and recoueryes in vſe for many other cauſes in maner as many as there dyd before the ſayde eſtatutes/and one cauſe why they be yet vſed ys to put away tenauncye by the curteſye and tytles of dower Another cauſe ys that landes in vſe ſhall not be put in execucyon vpon a ſtatute ſtaple/ſtatute marchaunt/nor recognyſaunce/but ſuche as be in the handes of the recognyſoure tyme of the execucyon ſuyd. And ſomtyme landes be put in vſe that they ſholde not be put in execucyon vpon a wrytte of extendi facias ad valenciã. And ſomtyme ſuche vſes be made that he to whoſe vſe.&c.may declare hys wyll theron/and ſomtyme for ſuertye of dyuers couenaũtes in indentures/of maryage/& other bargeyns. And theſe two laſt artycles be the moſt chyefe & pryncypall cauſes why ſo moche lande is put in vſe. Alſo lãdes in vſe be no aſſetes neyther ĩ a forme done nor ĩ an accyõ of det agaynſt the heyre:ne they ſhal not be put in execucyõ by an elegit ſued vpon a recouery as ſome ſay.

and theſe be the verye chyefe cauſes as I now remembre why ſo moche lande ſtandeth in vſe as there dothe/ and all the ſayd vſes be reſerued by the intente of the partyes vnderſtande or agreed bytwene theym/ and that many tymes dyrectely agaynſte the wordes of the feffement/ fyne/ or recouerye/ and that ys done by the lawe of reaſon as is aforeſayd. ¶ Doctour. May not an vſe be aſſygned to a ſtraunger as well as to be reſerued to the feffoure yf the feffour ſo appoynte yt vpon his feffement. ¶ Student. yes as well/ and in lyke wyſe to the feffe and that vpon a bare gyfte without any bargeyne or recompence yf the feffour ſoo wyll. ¶ Doctoure. what yf noo feffement be made but that a man graunte to hys feffe that fro thens forth he ſhall ſtāde ſeaſed to his owne vſe/ ys not the vſe chaunged thoughe there be no recompence. ¶ Student. I thynke yes for there was an vſe in eſſe before the gyfte which he maye as lawfully gyue awaye as he myght the lande yf he had it in poſſeſſyō. ¶ Doctour And what yf a man beynge ſeaſed of lande/ graunte to a nother of hys mere mocyon without bargeyne or recompence that he fro thens forth ſhall be ſeaſed to the vſe of the other / ys not that graunt good. ¶ Student. I ſuppoſe that yt ys not good for as I take the lawe that graunte ys voyde / for I thynke that a mā can not commence an vſe but by lyuerey of ſeaſon or vpon a bargeyne or ſome other recompence. ¶ Doctoure. I holde me contented with that thou haſte ſayd in this chapytre for this tyme / & I praye the ſhewe me what dyuerſytye thou putteſt bytwene thoſe two caſes that thou haſt before reherced in the.xx.chapytre and in the.xxi.chapytre of this preſent boke. ¶ Student I wyll with good wyll.

¶ The dyuerſytye bytwene two caſes here after folowynge wherof one ys put in the xx.chapytre / and the other in the.xxi. chapytre of thys preſent bocke

The.xxiii.chapytre.

¶ Student. The fyrſte caſe of the ſayd two caſes ys thys. A man maketh a feffement by dede indentyd vpon a condycyon that the feffe ſhall paye a certayne rente yerely to a ſtraunger .ꝛc. and yf he paye yt not / that yt ſhall be lawefull to the ſtraunger to entre in to the lande. In thys caſe I ſayde before in the .xx. chapytre / that the ſtraunger myght not entre bycauſe he was not pryuye to the condycyon. But I ſayde that in that caſe the feffoure myght lawefullye reentre by the fyrſte wordes of the indenture bycauſe they implye a condycyon in the lawe and that the other wordes / that ys to ſaye / that the ſtraunger ſholde entre be voyde in lawe and conſcyence. And therefore I ſayd ferther that when the feffour had rentred that he was ſeaſed of the lande to his owne vſe and not to the vſe of the ſtraunger / thoughe hys intente at the makynge of the feffemente were that the ſtraunger after hys entre ſholde haue had the lande to hys owne vſe yf he myght haue entered by the lawe. And the cauſe why I thynke that the feffoure was ſeaſed in that caſe to hys owne vſe I ſhall ſhewe the afterwarde. ¶ The ſeconde caſe ys thys / A man maketh a feffement in fee / and yt ys agreed vppon the feffemente that the feffe ſhall paye a yerelye rente to a ſtraunger / and yf he paye yt not / that then the ſtraunger ſhall entre in to the lande. In thys caſe I ſayde as yt appereth in the ſayde .xxi. chapytre / that yf the feffe payde not the rente / that the ſtraunger ſholde haue the vſe of the lande / thoughe he maye not by the rules of the lande entre in to the lande / and the dyuerſytye bytwene the caſes me thynketh to be thys. ¶ In the fyrſte caſe yt appereth as I haue ſayde before / that the feffoure myght lawefullye reentre by the lawe for not payment of the rente / and then when he entered accordynge / he by that entre auoyded the fyrſte lyuerey of ſeaſon / in ſo moche that after the reentre he was ſeaſed of the lande of lyke eſtate as he was before the feffemente. And ſoo remayneth noo thynge / where vppon the ſtraunger myght grounde hys vſe / but onelye the bare graunte or intente of the feffoure when he gaue the lande to the feffe vpon condycyon that he ſholde paye the rente to the ſtraunger / and yf not / that yt ſholde be lawfull to the ſtraunger to entre / for the feffement is auoyded by the reentre of the feffoure as I haue ſayd before / and as I ſayd in the laſt chapytre as I ſuppoſe a nude or bare graunte of hym that ys ſeaſed of lande ys not ſuffycyent to begyn an vſe vpon. ¶ Doctour A bare graunt may chaũge an vſe as thou thy ſelfe agredeſt in the laſt chapytre: why thē may not an vſe as well begyn vpon a bare graunt.

¶ Student. when an vſe ys in eſſe / he that hath the vſe may of hys mere mocyon gyue yt awaye yf he wyll without recompence as he myght the lande yf he had yt in poſſeſſyon / but I take yt for a grounde that he can not ſoo begyn an vſe without a lyuerey of ſeaſon or vpō a recompence / and that there is ſuche a groūde in the lawe that yt maye not ſo begyn yt appereth thus / yt hath ben alwaye holden for lawe that yf a man make a dede of feffemēt to another and delyuer the dede to hym as hys dede / that in that caſe he to whom the dede ys delyuered hath noo tytle ne medelynge with the lande afore lyuerey of ſeaſō be made to hym but onely that he maye entre and occupye the lande at the wy[illegible] of the feffoure / and there ys noo boke ſayth that the feffour in that caſe ys ſeaſed therof before lyuerey to the vſe of the feffe. And in lyke wyſe yf a man make a dede of feffemēt of two acres of lande that lye in two ſhyres intendynge to gyue theym to the feffe and maketh lyuerey of ſeaſon in the one ſhyre and not in the other / in this caſe it is comonly holden in bokes that the dede is voyde to that acre where noo lyuerey ys made excepte yt lye within the vyeu ſaue onely that he may entre and occupy at wyll as ys aforeſayd / and there ys no boke that ſayth that the feffe ſholde haue the vſe of the other acre / for yf an vſe paſſed therby then were not the dede voyde to all intentes / and yet yt appereth by the wordes of the dede that the feffour gaue the landes to the feffe / but for lacke of lyuerey of ſeaſō the gyfte was voyde and ſo me thynketh yt ys here without lyuerey of ſeaſon be made accordynge. But in the ſeconde caſe of the ſayd two caſes the feffe maye not rentre for none payment of the rente / and ſo the fyrſt lyuerey of ſeaſon contynueth ⁊ ſtandeth in effecte and therupon the fyrſt vſe maye well begyn in the ſtraunger of the lande when the rente ys not payde vnto hym accordynge to the fyrſt agrement. And ſo me thynketh that in the fyrſte caſe the vſe ys determyned bycauſe the lyuerey of ſeaſon whereupon yt commenſyd is determyned/and that in the ſeconde caſe the Vſe of the lande taketh effecte in the ſtraũger for not payment of the rente by the graunt made at the fyrſte lyuerey whiche yet contynuyth in hys effecte / and thys me thynketh ys the dyuerſytye bytwene the caſes.

¶ Doctoure. yet not withſtandynge the reaſon that thou haſte made me thynketh that yf a man ſcaſed of landes make a gyfte thereof or graunte by a nude promyſe without any lyuerey or recompence to hym made that he ſhal not be ſeaſed to his Vſe: ſo that that promyſe is therfore voyde in the lawe/that yet yt muſt holde ⁊ ſtande good in conſcyence and by the lawe of reaſon/for one rule of the lawe of reaſon ys/that we may do nothynge agaynſt the trouthe/and ſyth the tronthe ys that the owner of the grounde hathe graunted that he ſhall be ſeaſed to the Vſe of the other /that graunte muſte nedes ſtande in effecte or elles there ys no trouthe in the grauntoure. ¶ Student. It ys not agaynſte the trouthe of the grauntoure in thys caſe / thoughe by that graunte he be not ſeaſed to the vſe of the other / but yt proueth that he hathe graunted / that the lawe wyll not warraunte hym to graunte / wherfore hys graunte ys voyde. But yf the grauntoure had gone ferther and ſayde that he wolde alſo ſuffre the other to take the profytes of the landes without lette or interrupcyon / or that he wolde make hym eſtate in the lande when he ſholde be requyred / then I thynke in thoſe caſes he were bounden in conſcyence by that rule of the lawe of reaſon that thou haſte remembred to performe theym / yf he intended to be bounden by hys promyſe / for elles he ſholde goo agaynſte hys owne trouthe and agaynſte hys owne promyſe / But yet yt ſhall make noo vſe in that caſe / nor he to whome the promyſe ys made ſhall haue noo accyon in the lawe vppon that promyſe all thoughe yt be not performyd / for yt ys called in the lawe a nude or a naked promyſe / And thus me thynketh that in the fyrſte caſe of the ſayd two caſes the graunte ys nowe auoyded in the lawe by the reentre of the feffoure / and that the feffoure ys not bounden by hys graunte neyther in lawe nor conſcyence but that in the ſeconde he ys bounde ſo that the vſe paſſeth frome hym as I haue ſayd before. ¶ Doctour. I holde me contente with thyne oppynyon for this tyme/ but I pray the ſhewe me ſomwhat more at large what ys taken for a nude cõtracte or a naked promyſe in the lawes of Englande and where an accyon maye lye therupon and where not. ¶ Student. I wyll with good wyll ſay as me thynketh therin.

¶ What ys a nude contracte or a nakyd promyſe after the lawes of Englande and whether any accyon maye lye therupon. The. xxiiii. chapytre..

¶ Student. Fyrſt it is to be vnderſtande that contractes be grounded vpon a cuſtome of the realme and by the lawe that is called Vis gencium and not dyrectly by the lawe of reaſon/ for when all thynges were in comon yt neded not to haue cõtractes/ but after propertye was brought in/ they were ryght expedyent to all people/ ſo that a man myght haue of his neyghboure that he had not of his owne & that coulde not be lawfully but by hys gyfte/ by waye of lendynge concorde/ or by ſome leaſe/ bargeyne or ſale/ and ſuche bargeyns and ſales be called cōtractes and be made by aſſent of the partyes vpon agrement bytwene theym of goodes or landes for money or for other recompence/ but of money vſuell for money vſuell ys no contracte/ alſo a concorde ys propertye vpon an agrement bytwene the partyes with dyuers artycles therin/ ſome ryſynge on the one parte & ſome on the other/ as yf Iohan at ſtyle letteth a chambre to Henry herte & it is further agreed bytwene theym that the ſayd Henry herte ſhall goo to borde with the ſayd Iohan at ſtyle/ and the ſayd Henry herte to paye for the chambre & bordynge a certayne ſome. &c. thys ys properly called a concorde/ But yt ys alſo a contracte and a good accyon lyeth vpon yt/ howe be it yt ys not moche argued in the lawe of England what dyuerſytye ys bytwene a contracte/ a cōcorde/ a promyſe/ a gyfte/ a lone/ or a pledge/ a bargeyne/ a couenaunt or ſuche other/ for the intente of the lawe ys to haue the effecte of the matter argued and not the termes/ and a nude contracte ys where a man maketh a bargeyne or a ſale of hys goodes or landes without any recompence appoynted for yt. As yf I ſaye to a nother I ſelle the all my lande or all my goodes ⁊ nothynge ys aſſygned that the other ſhall gyue or paye for yt/ that ys a nude contracte/ and as I take yt/ it ys voyde in the lawe and conſcyence/ and a nude or a naked promyſe ys where a man promyſeth a nother to gyue hym certayne money ſuche a daye or to buylde hym an houſe/ or to do hym ſuche certayne ſeruyce/ and nothynge ys aſſygned for the money/ for the buyldynge/ nor for the ſeruyce/ theſe be called naked promyſes bycauſe there ys nothynge aſſygned why they ſholde be made/ and I thynke no accyon lyeth in thoſe caſes thoughe they be not performed. Alſo yf I promyſe to a nother to kepe hym ſuche certayne goodes ſaufely to ſuche a tyme ⁊ after I refuſe to take theym there lyeth noo accyon agaynſte me for yt/ but yf I take theym and after they be loſte or empeyred thrughe my neclygent kepynge/ there an accyon lyeth. ¶ Doctoure. But what oppynyon holde they that be lerned in the lawe of

Englande in ſuche promyſes that be called naked or nude promyſes/ whether doo they holde that they that make the promyſe be bounden in conſcyence to performe theyr promyſe thoughe they can not be compelled thereto by the lawe or not. ¶ Student. The bookes of the lawe of Englande treate lytell thereof / for yt ys lefte to the determynacyon of doctoures/ and therefore I pray the ſhewe me ſomwhat of thy mynde therin/ aud then I ſhall ſhewe the therin ſomewhat of the myndes of dyuers that be lerned in the lawe of the realme. ¶ Doctour. To declare that matter playnly after the ſayenge of doctours yt wolde aſke a longe tyme/ and therfore I wyll touche yt bryefly/ to gyue the occaſyon to deſyre to here more therein hereafter. Fyrſt thou ſhalte vnderſtande that there ys a promyſe that ys called an aduowe/ and that ys a promyſe made to god / who ſoo euer make ſuche auowe vppon a delyberate mynde entendynge to performe yt/ ys bounde in conſcyence to doo yt / thoughe yt be onely made in the herte withoute pronounſynge of wordes/ and of other promyſes made to man vppon a certayne cõſyderacyon/ yf the promyſe be not agaynſte the lawe. As yf A promyſe to gyue. B. xx. li. bycauſe he hath made hym ſuche a houſe or hath lente hym ſuche a thynge or ſuche other lyke / I thynke hym bounden to kepe hys promyſe. But yf the promyſe be ſo naked that there ys noo maner of conſyderacyon why yt ſholde be made / then I thynke hym not bounde to performe yt / for yt is to ſuppoſe that there was ſome errour in the makynge of the promyſe / but yf ſuche a promyſe be made / to a Unyuerſytye / to a cytye / to the chyrche / to the clergye / or to the poore men of ſuche a place / o to the honour of god or ſuche other cauſe lyke / as for mayntenaunce of lernynge / of the com̄ welthe / of the ſeruyce of god / or in relyefe of pouertye or ſuche other / that he ys bounden in conſcyence to performe yt though there be noo cōſyderacyon of worldly profyte that the grauntour hath had or intendeth to haue for yt / and in all ſuche promyſes it muſt be underſtande that he that made the promyſe intended to be bōde by hys promyſe for elles comonly after all doctours he ys not bounde / onelees he were bounde to yt before hys promyſe. As yf a man promyſe to gyue his fader a gowne that hath nede of yt to kepe hym fro colde / and yet thynketh not to gyue it hym / neuertheles he is bounde to gyue it for he was bounden therto before. Alſo after ſome doctours a man may be excuſyd of ſuche a promyſe in conſcyence by a caſueltye that cometh after the promyſe yf it be ſo that yf he had knowen of that caſueltye at the makyng of the promyſe he wolde not haue made yt. And alſo ſuche promyſes yf they ſhall bynde they muſte be honeſt / lawfull / and poſſyble / and elles they are not to be holden in conſcyence though there be a cauſe. &c. And yf the promyſe be good and with a cauſe thoughe no worldely profyte ſhall growe therby to hym that maketh the promyſe but onely a ſpyrytuall profyte as in the caſe before rehercyd of a promyſe made to a Unyuerſytye / to a cytye / to the chyrche / or ſuche other and with a cauſe / as to the honoure of god or ſuche other / there yt ys mooſt comonly holden that an accyon vpō thoſe promyſes lyeth in the lawe canon. ¶ Student. whether doſte thou meane in ſuche promyſes made to a Unyuerſytye / to a cytye / or to ſuche other as thou haſt reherced before / and with a cauſe / as to the honour of god or ſuche other. That that partye ſhall be bounde by hys promyſe yf he intendys not to be bounden thereby ye or naye.

¶ Doctoure. I thynke naye noo more then vppon promyſes made vnto comon perſones.

¶ Student. And then me thynketh clerelye that noo accyon can lye agaynſte hym vpon ſuche promyſes / for it ys ſecrete in hys owne conſcyence whether he entendys to be bounde or naye / And of the intente inwarde in the herte / mannes lawe can not Iuge / But of outwarde thynges / and that ys one of the cauſes why the lawe of god is neceſſarye / that ys to ſay / to iuge inwarde thynges as yt appereth in our fyrſt dyaloge the thyrde chapytre / and if an accyon ſholde lye in that caſe in the lawe canon then ſholde the lawe canon iuge vpon the inwarde intente of the herte whiche can not be as me ſemeth. And therfore after dyuers that be lernyd in the lawes of the realme all promyſes ſhall be taken in this maner / that is to ſay / yf he to whom the promyſe is made haue a charge by reaſon of the promyſe whiche he hath alſo performed / then in that caſe he ſhall haue an accyon for that thynge that was promyſed thou ghe he that made the promyſe haue no worldely profyte by yt. As yf a man ſaye to a nother hele ſuche a poore man of hys dyſeaſe / or make ſuche an hyghe waye and J ſhall gyue the thus moche / and he do yt J thynke an accyon lyeth at the comon lawe: And more ouer thoughe the thynge that he ſhall do be all ſpyrytuall yet yf he performe yt J thynke an accyon lyeth at the comon lawe. As yf a man ſay to a nother faſte for me all the nexte lente and J ſhall gyue the. ⁊c. And he performeth yt J thynke an accyon lyeth at the comon lawe. And in lyke wyſe yf a man ſay to a nother mary my doughter and J wyll gyue the .xx.li. Upon thys promyſe an accyon lyeth yf he mary hys doughter / and in this caſe he can not dyſcharge the promyſe thoughe he thought not to be bounde thereby / for yt ys a good contracte and he maye haue quid pro quo / that is to ſaye / the preferment of hys doughter for hys money / But in thoſe promyſes made to an Unyuerſytye or ſuche other as thou haſte remembred before / with ſuche cauſes as thou haſte ſhewed / that ys to ſay / to the honoure of god or to the encreaſe of lernynge or suche other / where the partye to whome the promyſe was made ys bounde to no newe charge by reaſon of the promyſe made to hym but as he was bounde before / there they thynke that no accyon lyeth agaynſt hym thoughe he performe not his promyſe / for yt ys noo contracte / and ſoo hys owne conſcyence muſte be hys Iugge whether he intendyd to be bounde by hys promyſe or not. And yf he intendyd yt not thē he offendyd for hys dyſſymulacyon onelye / but yf he intendyd to be bounde then yf he performe yt not vntrouth ys in hym and he proueth hym ſelfe to be a lyer whiche ys prohybytyd as well by the lawe of god as by the lawe of reaſon / ¶ ferthermore many of theym that be lerned in the lawe of Englande holde that a man ys as moche bounden in conſcyence by a promyſe made to a comon perſon yf he intende to be boūde by his promyſe as he ys in the other caſes that thou haſte remembred of a promyſe made to the chyrche / or to the clergye / or ſuche other / for they ſaye that as moche vntrouth ys in the brekynge of the one as of the other / and they ſay that the vntrouth ys more to be pondered then the perſon to whome the promyſes be made. ¶ Doctour. But what hold they if the promyſe be made for a thynge paſte / as I promyſe to the .xl.li. for that thou haſt buylded me ſuche a houſe / lyeth an accyon there. ¶ Student. They ſuppoſe nay / but he ſhall be boude in conſcyence to performe yt after hys intente as ys before ſayd. ¶ Doctour. And yf a man promyſe to gyue a nother .xl.li. in recompeuce for ſuche a treſpas that he hath done hym / lyeth an accyon there. ¶ Student. Naye / and the cauſe ys for that ſuche promyſes be no perfyte contractes / for a contracte is properly where a man for hys money ſhall haue by aſſente of the other partye certayne goodes or ſome other profyte at the tyme of the cõtracte or after / but yf the thynge be promyſed for a cauſe that ys paſt by way of a recompence then it is rather a concorde then a contracte / but thẽ the lawe is that vpon ſuche accorde the thynge that ys promyſyd in recompence muſte be payde or delyuered in hande / for vpon an accorde there lyeth no accyon. ¶ Doctour. But in the caſe of treſpas whether holde they that he be bounde by hys promyſe though he intẽded not to be boũde therby.

¶Student. They thynke nay no more then in the other caſes that be put before. ¶Doctour. In the other caſes he was not bounde to that he promyſed but onely by his promyſe/ but in this caſe of treſpas he was bounde in conſcyence before the ꝓmyſe to make recompence for the treſpas ⁊ therfore it ſemeth that he ys boũde in conſcyence to kepe hys promyſe thoughe he intended not to be bounden therby. ¶Studẽt. Thoughe he were bounde before the promyſe to make recompence for his treſpas yet he was not bounden to noo ſome incertayne but by hys promyſe/ and bycauſe that ſome may be to moche or to lytell ⁊ not egall to the treſpas/ ⁊ that the partye to whom the treſpas was done notwithſtandyng the promyſe is at lyberty to take his accyon of treſpas yf he wyll/ therfore they holde that he may be his owne iuge in cõſcyence whether he intendyd to be bounde by hys promyſe or not as he may in other caſes/ but yf yt were of a dette/ then they holde that he ys bounden to performe his promyſe in conſcyence.

¶Doctoure. what yf in the caſe of treſpas he afferme his promyſe with an othe. ¶Studẽt. Then they holde that he is bounde to performe yt for ſauynge of his othe thoughe he intyndyd not to be boũde/but yf he intendyd to be boũde by his promyſe/then they ſaye that an othe nedeth not but to enforce the promyſe/for they ſay he breketh the lawe of reaſon/whiche ys that we may do no thynge agaynſte the trouthe/as well when he breketh hys promyſe that he thought in hys owne herte to be bounde by/as he dothe when he breketh hys othe thoughe the offence be not ſo grete by reaſon of the periury/more ouer to that thou ſayſte that vpon ſuche promyſes as thou haſt rehercyd before ſhall lye an accyon after the lawe canon/Verylye as to that in thys realme there can no accyon lye theron in the ſpyrytuall courte/yf the promyſe be of a temporall thynge for a prohybycyon or a premunire facias ſholde lye in that caſe.

¶ Doctoure. That ys meruayle ſyth there can no accyon lye thereon in the kynges courte as thou ſayſt thy ſelfe. ¶ Student. That maketh no matter/for though there lye no accyon in the kynges courte agaynſt executours vpõ a ſymple contracte/yet yf they be ſuyd in that caſe for the dette in the ſpyrytuall courte a prohybycyon lyeth.

And in lyke wyſe yf a mā wage hys lawe vntrulye in an accyon of dette vpon a contracte in the kynges courte / yet he ſhall not be ſuyd for that periurye in the ſpyrytuall courte / and yet noo remedye lyeth for that periurye in the kynges courte / for the prohybycyon lyeth not onely where a mā is ſuyd in the ſpyrytual courte of ſuche thynges as the partye may haue his remedye of in the kynges courte / but alſo where the ſpyrytual courte holdeth ple in ſuche caſe where they by the kynges prerogatyue and by the auncyent cuſtom of the realme ought none to holde. ¶ Doctour. I wyll take aduyſemēt vpon thyne oppynyons in this matter tyll a nother tyme. And I praye the nowe procede to a nother queſtyon.

¶ The .xx. queſtyon of the ſtudent.

The .xxv. chapytre.

¶ Student. A man hath two ſonnes one borne before eſpouſels and the other after eſpouſels / and the father by hys wyll byquetheth to hys ſonne and heyre all hys goodes/ whiche of theſe two ſonnes ſhall haue the goodes in conſcyence. ¶ Doctoure. As I ſayd in our fyrſte dyaloge the laſte chapytre/ the doute of thys caſe dependeth not in the knowynge what conſcyence wyl in the caſe: but rather in knowyng whiche of the ſonnes ſhall be iuged heyre/ that ys to ſaye/ whether he ſhall be taken for heyre that ys heyre by the ſpyrytuall lawe or he that ys heyre by the lawe of the realme/ or elles that yt ſhall be Juged for hym that the father toke for heyre. ¶ Student. As to that poynte admytte the fathers mynde not to be knowen/ or elles that hys mynde was that he ſholde be taken for heyre that ſholde be Juged for heyre by that lawe that in this caſe it ought to be Juged by. And then I praye the ſhewe me thy mynde therin/ for thoughe the queſtyon be not dyrectly dependynge vpon that poynte to ſe what conſcyence wyll in thys caſe/ yet yt ys ryght expedyent for the well orderyng of conſcyence that yt be knowen after what lawe yt ſhall be Juged/ for yf yt ought to be Juged after the temporall lawe who ſholde be heyre/ then yt were agaynſt cõſcyence yf the iuges in the ſpyrytuall lawe ſholde iuge hym for heyre that ys heyre by the ſpyrytuall lawe/and I thynke they ſholde be bounden to reſtytucyon therby/and therfore I pray the ſhewe me thyn oppynyō after what lawe yt ſhall be iuged. ¶ Doctour. Me thynketh that in this caſe yt ſhall be iuged after the lawe of the chyrche/ for yt appereth that the byqueſt is of goodes and therefore yf any ſute ſhall be taken vpon the execucyon of the wyll for that byqueſt yt muſte be taken in the ſpyrytuall courte/and when yt ys dependynge in the ſpyrytuall courte me thynketh yt muſte be iuged after the ſpyrytuall lawe for of the temporall lawe they haue noo knowlege/nor they are not bounde to knowe it as me thynketh and more ſtronger not to iuge after yt. But yf the byqueſt had ben of a chatell reale as of a leaſe for terme of yeres or of a warde or ſuche other then the matter ſholde haue come in debate in the kynges courte/and thē I thynke the iuges there ſholde iuge after the lawe of the realme/& that is that the yonger brother ys heyre/& ſoo me thynketh the dyuerſytye of the courtes ſhal make the dyuerſytye of the iugement. ¶ Student. Of that myght folowe a grete inconue/

nyence as me ſemeth/ for it myght be that in ſuche caſe bothe chatels reale ⁊ chatels perſonell myght be in the wyll. And then after thyne oppynyon the one ſonne ſholde haue the chatels perſonell/ and the other ſonne the chatels reale: ⁊ it can not be conuenyently taken as me thynketh but that the fathers wyll was that the one ſholde haue all ⁊ not to be deuyded. Therfore me thynketh that he ſhal be iuged for heyre that is heyre by the co̅mon lawe. And that the iuges ſpyrytuall in this caſe be bounde to take notyce what the comon lawe ys/ for ſyth the thynges that be in varyau̅ce be te̅porall/ that ys to ſay/ the goodes of the father/ it is reaſon that the ryght of theym in this realme ſhall be determyned by the lawe of the realme. ¶ Doctoure. Howe maye that be for the Iuges ſpyrytuall knowe not the lawe of the realme ne they can not knowe it as to the moſt parte of theym/ for moche parte of the lawe is in ſuche ſpeche that fewe men haue knowlege of it/ and there is no meanes ne famylyarytye of ſtudy bytwene the̅ that lerne the ſayd lawes/ for they be lerned in ſeuerall places ⁊ after dyuers wayes ⁊ after dyuers maners of techynges ⁊ in dyuers ſpeches.

And comonly the one of theym haue none of the bokes of the other/and to bynde the ſpyrytuall Juges to gyue iugement after that lawe that they knowe not/ne that they can not come to the knowlege of/yt ſemeth not reaſonable. ¶ Student. They muſt do therin as the kynges Juges muſt do when any matter cometh before theym that ought to be Juged after the ſpyrytuall lawe/whereof J put dyuers caſes in our fyrſte dyaloge the .vii. chapytre/that ys to ſay/they muſte eyther take knowlege of yt by theyr owne ſtudye/or elles they muſte enquere of theym that be lerned in the lawe of the chyrche what the lawe ys ⁊ in lyke wyſe muſte they do. But yt is to doute that ſome of theym wolde be lothe to aſke any ſuche queſtyon in ſuche caſe/or to confeſſe that they are bounde to gyue theyr iugement after the temporall lawe and ſurely they may lyghtly offende theyr conſcyence. ¶ Doctoure. J ſuppoſe that ſome be of opynyon that they are not boũden to know the lawe of the realme/and verylye to my remembraũce J haue not herde that iuges of the ſpyrytuall lawe are bounde to knowe the lawe of the realme. ¶ Student. And J ſuppoſe that they are not onely bounden to knowe the lawe of the realme or to do that in theym ys to knowe yt when the knowlege of yt openeth the ryght of the matter that dependeth before thẽ/ but that they be alſo bounden to knowe where and in what caſe they ought to Iuge after yt/ for in ſuche caſes they muſte take the kynges lawe as the lawe ſpyrytuall to that poynte/ & are bounden in cõſcyence to folowe it as it may appere by dyuers caſes wherof one ys thys.

Two ioynt tenauntes be of goodes & the one of theym by hys laſte wyll byquethyth all hys parte to a ſtraũger and maketh the other ioynt tenaunt hys executour & dyeth/ yf he to whom the byqueſt is made ſue the other ioynt tenaunt vpon the legacye as executour.&c. Vpon thys matter ſhewed the iuges of the ſpyrytuall law are bounden to iuge the wyll to be voyde/ bycauſe yt ys voyde by the lawe of the realme/ wherby the ioynt tenaunt hath ryght to the hole goodes by the tytle of the ſuruyuoure/ and ys iuged to haue the goodes as by the fyrſt gyfte/ whiche is before the tytle of the wyll and muſt therfore haue preferment as the elder tytle. And yf the iuges of the ſpyrytuall courte iuge otherwyſe they are bounden in conſcyence to reſtytucyon. And by lyke reaſon the executour of a man that is outlawyd the tyme of his deth may dyſcharge theym ſelfe of the perfourmynge of legacyes/bycauſe they be chargeable to the kynge/and yet there ys noo ſuche lawe of outlagarye in the ſpyrytuall lawe. ¶ Doctoure. By occaſyon of that thou haſte ſayd before I wolde aſke of the this queſtyon/yf a perſon of a chyrche alyen a porcyon of dyſmes accordyng as the ſpyrytuall lawe hath ordeyned/ys not that alyenacyon ſuffycyent thoughe it haue not the ſolempnytyes of the temporall lawe.

¶ Student. I am in doute therein yf the porcyon be vnder the fourth parte of the value of the chyrche but yf it be to the value of the .iiii. parte of the chyrche or aboue/yt is not ſuffycyent. And therefore was the wrytte of ryght of dyſmes ordeyned/and yf in a wrytte of ryght of dyſmes yt be iuged in the kynges courte for the patrone of the ſucceſſoure of hym that alyenyd bycauſe the alyenacyon was not made accordynge to the comon lawe/then the Iuges of the ſpyrytuall lawe are bounden to gyue theyr Iugement accordynge to the Iugement gyuen in the kynges courte. And in lyke wyſe yf a perſon of a chyrche agre to take a pencyon for the tythe of a mylle yf the pencyon be to the fourth parte of the value of the chyrche or aboue / then yt muſte be alyenyd after the ſolempnytyes of the kynges lawes as lãdes and tenementes muſte / or elles the patron of the ſucceſſoure of hym that alyenyd maye brynge a wrytte of ryght of dyſmes and recouer in the kynges courte / and then the Juges of the ſpyrytuall courte are bounden to gyue Jugement in the ſpyrytual courte accordyngly as is afore ſayd. ¶ Doctour. I haue herde ſay that a wrytte of ryght of dyſmes ys gyuen by the ſtatute of.w.the ſeconde and that ſpeketh onelye of dyſmes & not of penſyons. ¶ Student. where a perſon of a chyrche ys wrongfully deforcyd of hys dyſmes and is let by an indicauit to aſke his dyſmes in the ſpyrytuall courte thẽ his patron may haue a wrytte of ryght of dyſmes by the ſtatute that thou ſpekeſt of for there lay none at the comon lawe for the perſone had there good ryght thoughe he were let by the indicauit to ſue for hys ryght. But when the perſon had no remedy at the ſpyrytuall lawe there a wrytte of ryght of dyſmes lay for the patron by the comon lawe as well of penſyons as of dyſmes/and ſome ſaye that in ſuche caſe yt lay of leſſe then of the fourth parte by the comon lawe / but that J paſſe ouer. And the reaſon why yt lay at the comon lawe yf the dyſmes or penſyons were aboue the fourth parte. &c. was this/by the ſpyrytuall lawe the alyenacyon of the perſon with aſſent of the buſſhoppe and of the chapytre ſhall barre the ſucceſſour without aſſent of the patrone/ and ſoo the patrone myght leeſe hys patronage and he not aſſentynge thereto/for hys encumbent myght haue no remedye but in the ſpyrytuall courte and there he was barred / wherefore the patrone in that caſe ſhall haue his remedye by the comon lawe where the aſſent of the ordynarye and chapytre without the patrone ſhall not ſerue / as ys ſayd before. But where the encumbent had good ryght/by the ſpyrytuall lawe there lay no remedye for the patron by the comon lawe thoughe the encumbent were let by an indicauit/ for that cauſe was the ſayd ſtatute made / and yt lyeth as well by the equytye for offerynges and penſyons as for dyſmes. Then ferther J wolde thynke that where the ſpyrytuall courte may holde ple of a temporall thynge that they muſt iuge after the temporall lawe / and that ygnoraūce ſhall not excuſe theym in that caſe / for by takynge theyr offyce they haue bounde theym ſelfe to haue knowlege of as moche as belongeth to theyr offyce as all iuges be ſpyrytuall and temporall. But yf yt were in argument in thys caſe whether the eldeſt ſonne myght be a preſte bycauſe he is a baſterde in the temporall lawe that ſhal be iuged after the ſpyrytuall lawe for the matter ys ſpyrytuall.

¶ Doctour. yet not withſtandynge all the reaſons that thou haſt made I can not ſe howe the iuges of the ſpyrytuall lawe ſhal be compelled to take notyce of the tēporall lawe ſeynge that the moſt parte of yt ys in the frenche tonge for it were harde that euery ſpyrytuall iuge ſholde be compelled to lerne that tonge / But yf the lawe of the realme were ſet in ſuche order that they that intende to ſtudye the lawe canon myght fyrſt haue a ſyght of the lawe of the realme as they haue nowe of the lawe cyuyll. And that ſome bokes and treatyſes were made of caſes of conſcyence concernynge thoſe two lawes as there be nowe concernyng the lawe cyuyll and the lawe canon / yt were ryght expedyent as me ſemeth / and then reaſon myght ſerue the better that they ſholde be compelled to take notyce of the lawe of the realme as they be nowe bounde in ſuche countreys as the lawe cyuyll ys vſed to take notyce of that lawe.

¶ Student. Me thynketh / thyne oppynyon is ryght good and reaſonable / but tyll ſuche an order be take̅ they are bounden as I ſuppoſe to enquere of theym that be lerned in the comon lawe what the lawe ys / and ſoo to gyue theyr iugement accordynge yf they wyll kepe theym ſelfe fro offence of conſcyence / and for as moche as thou haſte well ſatyſfyed my mynde in all theſe queſtyons before. I praye the nowe that I may ſomwhat fele thy mynde in dyuers artycles that be made for the orderynge of conſcyence vpon the lawe canon and cyuyll / for me thynketh that there be dyuers concluſyons put in dyuers bokes / as in the ſummes callyd Summa angelica / and Summa roſella / and dyuers other for the good order of conſcyence that be agaynſte the lawe of the realme / and rather blynde conſcyence then to gyue any lyght vnto yt. ¶ Doctoure. I praye the ſhewe me ſome of thoſe caſes. ¶ Student. I wyll with good wyll.

¶ whether an abbot may with conſcyence preſent to an aduouſon of a chyrche that belongeth to the houſe without aſſente of the couent. The.xxvi. chapytre.*.

¶ Doctour. It appereth in the chapytre Ea noſcitur de his que fiunt a prelatis/the whiche chapytre ys recyted in the ſumme called Summa angelica in the tytle abbas the .xxvii. artycle that he maye not without any cuſtome or any ſpyrytuall pryuylege do helpe therein.

¶ Student. Trouthe yt ys that there ys ſuche a decretale/but they that be lerned in the lawe of Englande holde that that decretale byndeth not in thys realme/and thys ys the cauſe why they doo holde that oppynyon.

By the lawe of the realme the hole dyſpoſycyō of the landes and goodes of the abbey ys in the abbot onely for the tyme that he ys abbot ⁊ not in the couent / for they be but as dede perſones in the lawe / and therfore the abbot ſhall ſue ⁊ be ſuyd onely without the couent / do homage / fealtye / atturne / make leaſes / and preſent to aduouſons onely in hys owne name / and they ſaye ferther that this anthorytye can not be taken fro hym but by the lawe of the realme / and ſo they ſaye the makers of that decretale exceded theyr power / wherfore they ſay yt is not to be holden in conſcyence / no more thē yf a decre were made that a leaſe for terme of yeres or at wyll made by the abbot withoute the couente ſholde be immedyatly voyde / and ſo they thynke that the abbot may in thys caſe preſent in his owne name without offence of conſcyence bycauſe the ſayd decretale holdeth not in thys realme. ¶ Doctoure. But many be of oppynyō that no man hath authorytye to preſent in ryght and conſcyence to any benyfyce with cure but the pope or he that hath his authorytye therein deryuyed fro the Pope for they ſaye that for as moche as the Pope ys the vycar generall

Vnder god/and hath the charge of the ſoules of all people that be in the flocke of Chryſtes chyrche. It ys reaſon that ſyth he can not mynyſtre to all ne doo that ys neceſſarye to all the people for theyr ſoule helthe in hys owne perſon that he ſhal aſſygne deputyes for his dyſcharge in that behalfe/and bycauſe patrons clayme to preſent to chyrches in this realme by theyr owne ryght without tytle deryued fro the pope they ſaye that they vſurpe vpon the popes authorytye/and therfore they conclude that thoughe the abbot haue tytle by the lawe of the realme to preſent in thys caſe in hys owne name/that yet bycauſe that tytle ys agaynſt the popes prerogatyue that that tytle ne yet the lawe of the realme that mayntenyth that tytle holdeth not in conſcyence. And they ſay alſo that yt belongeth to the lawe canon to determyne the ryght of preſentement of benefyces/for yt ys a thynge ſpyrytuall and belongeth to the ſpyrytuall iuryſdyccyon as the depryuacyon fro a benyfyce doth. And ſo they ſaye the ſayd decre byndeth in conſcyence thoughe in the lawe of the realme yt bynde not. ¶Student. As to thy fyrſte conſyderacyon I wolde ryght well agre that yf the patrons of chyrches in this realme claymed to put encumbentes in to ſuche chyrches as ſholde fall voyde of theyr patronage without preſentyng theym to the buſſhop or yf they claymed that the buſſhop ſholde admyt ſuche encumbent as they ſholde preſente without any examynacyon to be made of his habylytye in that behalfe / that that clayme were agaynſt reaſon and cōſcyence for the cauſe that thou haſt rehercyd / but for as moche as the patrons in thys realme clayme no more but to preſent theyr encumbentes to the buſſhop / and the the buſſhop to examyn the habylytye of the encumbent / and yf he fynde hym by the examynacyon not able to haue cure of ſoule / he then to refuſe hym and the patrone to preſent another that ſhall be able / and yf he be able / then the buſſhop to admyt hym / inſtytute hym / and induce hym. I thynke that thys clayme & theyr preſentementes therupon ſtande with good reaſon and conſcyence / and as to thy ſeconde conſyderacyon / yt ys holden in the lawes of the realme that the ryght of preſentement to a chyrch ys a temporall enherytaunce & ſhall deſcende by courſe of enherytaunce fro heyre to heyre as landes ⁊ tenementes ſhall ⁊ ſhall be taken as an aſſes as lādes ⁊ tenemētes ſhall/ ⁊ for the tryall of patronages be ordeyned in the lawe dyuers accyons for theym that be wronged in that behalfe/ as wryttes of ryght/ of aduouſon/ aſſyſes of daren/ preſentement quare impedit: ⁊ dyuers other/ whiche alwaye withoute tyme of mynde haue ben pledyd in the kynges courtes as thynges perteynynge to his crowne ⁊ royall dygnytye/ ⁊ therfore they ſaye that in this caſe hys lawes ought to be obeyed in lawe ⁊ conſcyence. ¶ Doctoure. If yt come in varyaunce whether he that is ſo preſentyd be able or not able/ by whom ſhall the habylytye be tryed.

¶ Student. yf the ordynarye be not partye to the accyon yt ſhall be tryed by the ordynarye/ ⁊ yf he be partye yt ſhall be tryed by the metropolytane. ¶ Doctour. Thē the law is more reaſonable in that poynt thē I thought it had ben/ but in the other poynt I wyll take aduyſemēt of it tyl a nother tyme/ ⁊ I pray the ſhewe me thy mynde in this poynt: if an abbot name his couēt with hym in his p̄ſentacyō doth that make the p̄preſentacyon voyde in the lawe or ys the preſentacyon good that not withſtandynge.

¶ Student. I thynke nay but the namyng of theym is voyde and a thyng more then nedeth/ for yf the abbot be dyſturbed he muſte brynge hys accyon in hys owne name without the couente. ¶ Doctoure. Then I perceyue well that it is not prohybyt in the lawe of Englande but that the abbot may name the couent in hys preſentacyon with hym/ and alſo take theyr aſſent whom he ſhall preſent yf he wyll/ & then I holde yt the ſureſt waye that he ſo do/ for in ſoo doynge he ſhall offende neyther in lawe nor conſcyence. ¶ Student. To take the aſſente of the couent whom he ſhall preſent and to name theym alſo in the preſentacyon knowynge that he may do otherwyſe bothe in lawe and conſcyence yf he wyll/ ys noo offence. But yf he take theyr aſſent or name theym with hym in the preſentacyon thynkynge that he ys ſoo bounde to do in lawe and conſcyence/ ſettynge a conſcyence where none ys/ and regardeth not the lawe of the realme that wyll dyſcharge his cõſcyence in this behalfe yf he wyll (ſo that he preſent an able man as he maye doo without theyr aſſent) there ys an erroure and offence of conſcyence in the abbot. And in lyke wyſe yf the abbot preſent in hys owne name / and therfore the couent ſayth that he offendeth conſcyence in that he obſerueth not the lawe of the chyrche for that he taketh not theyr aſſente / then they offende in iugynge hym to offende / that offendeth not. And therfore the ſure way ys in thys caſe to Iuge bothe the ſayd lawes of ſuche effecte as they be / and not to ſet an offence of cõſcyence by brekynge of the ſayde decre which ſtandeth not in effecte in thys behalfe within thys realme.

¶ If a man fynde beeſtes in hys corne doynge hurte / whether may he by his owne authorytye take theym and kepe theym tyl he be ſatyſfyed for the hurte.

The .xxvii. chapytre.

¶ Doctoure. This queſtyon ys made in the ſume called ſumma roſella in the tytle of reſtytucyon / that ys to ſaye / reſtytucio .viii. the .ix. artycle / and there it is anſwered that he maye not take theym for to holde theym as a pledge tyll he be ſatyſfyed for the hurte / but that he may take theym and kepe theym tyll he knowe who owyth theym that he may knowe agaynſt whome to haue hys remedye / ys not the lawe of the realme ſo in lyke wyſe. ¶ Student. No verylye for by the lawe of the realme / he that in that caſe hath the hurte may take the beeſtes as a dyſtreſſe and put theym in a pounde ouerte ſo yt be within the ſame ſhyre / & there let theym remayne tyll the owner wyll make hym amendes for the treſpas. ¶ Doctoure. what calleſt thou a pounde ouerte. ¶ Student. A pounde ouerte ys not onely ſuche poundes as be comonly made in townes and lordſhyppes for to put in beeſtes that be dyſtrayned / but it is alſo euery place where they may be in lawfully not makyng the owner an offẽder for theyr beyng ther and that it be alſo that the owner may lawfully gyue the beeſtes mete & drynke whyle they be in pounde. ¶ Doctoure. And yf they dye in pounde for lacke of mete whoſe Jeoperdye ys yt. ¶ Student. If it be ſuche a pounde ouerte as I ſpeke of / yt ys at the perylle of hym that owyth the beſtes / and yet he that had the hurte ſhall be at lybertye to take hys accyon for the treſpas yf he wyll. And yf yt be not a lawfull pounde then yt ys at the peryll of hym that dyſtrayned/ and ſo yt ys yf he dryue theym out of the ſhyre and they dye there. ¶ Doctoure. I put caſe that he that owyth the beeſtes offer ſuffycyent amendes and the other wyll not take it but kepeth the beeſtes ſtyll in pounde/ may not the owner take theym out. ¶ Student. No/ for he may not be hys owne iuge. And yf he do an accyon lyeth agaynſte hym for brekynge of the pounde/ but he muſt ſue a repleuyn to haue hys beeſtes delyueryd hym out of pounde/ and therupon yt ſhall be tryed by .xii. men whether the amendes that was offered were ſuffycyent or not/ and therupon he that hath the hurte ſhal haue ſuche amendes as the .xii. men ſhal aſſes. ¶ Doctoure. If yt be founde by the .xii. men that the amendes were ſuffycyent ſhall he that refuſed to take yt haue no punyſſhment for hys refuſell and for kepynge of the beeſtes in pounde after that tyme. ¶ Student. I thynke no/ but onely the enqueſt vpon the repleuyn maye in that caſe ſet the greter daunges.

¶ Doctoure. I put caſe that the beeſtes after that refuſell dye in pounde for lacke of mete, at whoſe ieoperdye ys yt then. ¶ Student. At the ieoperdye of hym that owyth the beeſtes as it was before/ for he ys bounde at hys perylł by reaſon of that wronge that was done at the begynnynge to ſe that they haue mete as longe as they ſhall be in pounde: onles the kynges wryt come to delyuer theym and he reſyſteth yt/ for after that tyme yt wyll be at hys Ieoperdye yf they dye for lacke of mete and the damages ſhal be recouered in an accyon brought vpon the ſtatute for dyſobeyenge the kynges wrytte.

¶ whether a gyft made by one vnder the age of .xxv. yere be good.

The .xxviii. chapytre.

¶ Doctoure. It appereth in ſumma angelica in the tytle donacio prima the .vii. artycle that a man before the age of .xxv. yere may not gyue without yt be with the authorytye of hys tutoure. &c. ¶ Student. The age of infauntes to gyue or ſelle theyr landes and goodes in the lawe of England is .xxi. yere or aboue ſo that after that age the gyfte ys good / and before that age yt is not good / by whoſe aſſent ſo euer it be / excepte yt be for hys mete and drynke or apparell / or that he do yt as executoure in performaunce of the wyll of hys teſtatoure or in ſome other lyke caſes that nedeth not to be rehercyd here / and that age muſt be obſerued in this realme in lawe and conſcyence and not the ſayd age of .xxv. ¶ Doctoure. I put caſe yt were ordeyned by a decre of the chyrche that yf any man by hys wyll bequethe goodes to another and wylleth that they ſhall be delyuered to hym at hys full age that in that caſe .xxv. yere ſhall be taken for the full age ſhall not that decre be obſerued and ſtande good after the lawe of Englande. ¶ Student. I ſuppoſe yt ſhall not for thoughe yt belong to the chyrche to haue the probate and the execucyons of teſtamentes made of goodes and chatels excepte yt be in certayne lordſhyppes and ſegnouryes that haue theym by preſcrypcyon / yet the chyrche may not as yt ſemeth determyne what ſhall be the lawfull age for any perſone to haue the goodes for that belongeth to the kynge ⁊ his lawes to determyne / ⁊ therfore yf yt were ordeyned by a ſtatute of the realme that he ſholde not in suche caſe haue the goodes tyll he were of the age of .xxv. yere that ſtatute were good ⁊ to be obſerued as wel in the ſpyrytual lawe as in the lawe of the realme / ⁊ yf a ſtatute were good in that caſe / then a decre made therof is not to be obſerued / for the orderynge of the age maye not be vnder two ſeuerall powers / ⁊ one propertye of euery good lawe of man ys / that the maker excede not his authorytye / ⁊ I thynke that the ſpyrytuall Juges in that caſe ought to iuge the full age after the lawe of the realme ſeyng that the matter of the age cōcernyth temporall goodes / ⁊ I ſuppoſe ferther that as the kyng by authorytye of his parlyament may ordeyne that all wylles ſhalbe voyde ⁊ that the goodes of euery man ſhall be dyſpoſyd in ſuch maner as by ſtatute ſholde be aſſygned / that more ſtronger he maye appoynte at what age ſuche wylles as be made ſhall be performyd.

¶ Doctoure. Thynkeſt thou then that the kynge maye take awaye the power of the ordynarye that he ſhall not calle executoures to accompte. ¶ Studẽt. I am ſomwhat in doute therin / but yt ſemeth that yf it myght be enactyd by ſtatute that all wylles ſholde be voyde as is afore ſayd / that then yt myght be enactyd that no man ſholde haue auctorytye to call none to accompte vpon ſuche wylles / but ſuche as the ſtatute ſhall therto appoynte / for he that may do the more may do the leſſe / not withſtandynge I wyll nothynge ſpeke determynatlye in that poynte at thys tyme / ne I meane not that yt were good to make a ſtatute that all wylles ſholde be voyde / for I thynke theym ryght expedyent / but myne intente ys to proue that the comon lawe maye ordeyne the tyme of the full age / as well in wylles of temporall thynges as otherwyſe / and that noo wyll ſhall be made / and yf yt maye ſo doo / then moch ſtrõger yt belongeth to the kynges lawes to interpretate wylles concernynge temporall thynges as well when they come in argument before hys Iuges as when they come in argument before ſpyrytuall Iuges / and that they ought not to be iuged by ſeuerall lawes / that is to ſay by the ſpyrytuall iuges in one maner / & by the kynges iuges in a nother maner.

The.xxix.chaptre.

¶ If a man be conuycte of hereſye before the ordynarye/ whether his goodes be forfet.

The.xxix.chaptre.

¶ Doctour. It appereth in ſumma angelica; in the tytle donacio prima the.viii.artycle/ that he that ys an heretyke maye not make executoures/ for in the lawe hys goodes be forfet/ what ys the lawe of the realme therin.

¶ Student. If a man be conuycte of heryſye and abiure he hath forfet no goodes/ but yf he be conuycte of hereſye and be delyuerd to laye mennes handes then hath he forfet all his goodes that he hath at the tyme that he ys delyueryd to theym/ though he be not put in execucyon for the hereſye/ but hys landes he ſhall not forfet excepte he be dede for the hereſye/ & then he ſhall forfet theym to the lordes of the fee/ as in caſe of felonye excepte they be holden of the ordynarye/ for then the kynge ſhall haue the forfeture/ as yt appereth by a ſtatute made the ſeconde yere of kynge Henry the.v.the.vii.chapytre. ¶ Doctoure. Me thynketh that as yt belongeth onely to the chyrche to determyne hereſyes/that ſo it belongeth to the chyrch to determyne what punyſſhement he ſhall haue for his hereſye excepte deth whiche they maye not be iuges in/but yf the chyrch decre that he ſhal therefore forfet hys goodes me thynketh that they be forfet by that decre. ¶ Student. Nay verely for they be temporall and belonge to the iugement of the kynges courte and I thynke the ordynarye myght haue ſet no fyne vpō none empeched of hereſye tyll yt was ordeyned by the ſtatute of Henry the fourth that he may ſet a fyne in that caſe yf he ſe cauſe / and then the kynge ſhall haue that fyne as in the ſayde ſtatute appereth.

¶ where dyuers patrons be of an aduouſon/ and the chyrche voydyth/the patrons varye in theyr preſentementes/ whether the buſſhoppe ſhall haue lybertye to preſent whiche of the encumbentes that he wyll or not.

The.xxx.chapytre.

¶ Doctoure. Thys queſtyon ys aſked in Summa roſella in the tytle patronus the .ix.

artycle and there yt appereth by the better opynyon that he may preſent whether clerke he wyl/ howbeit the maker of the ſayd ſome ſayth that by the rygoure of the lawe the buſſhop in ſuche caſe may preſent a ſtraunger bycauſe the patrons agre not/ ⁊ in the ſame chapytre patronus the.xv.artycle. It is ſayd that he muſt be preferryd that hath the moſt merytes ⁊ hath the mooſt parte. And yf the nombre be egall/ that then it is to conſyder the merytes of the patrōs and yf they be of lyke meryte/ then maye the buſſhop commaunde theym to agre and to preſent agayne. And yf they can not agre then the lybertye to preſent ys gyuen to the buſſhop to take whiche he wyll/ and yf he may not yet preſent without grete trouble thē ſhal the buſſhop order the chyrche in the beſt maner he can/ and yf he can not order it/ then ſhall he ſuſpende the chyrche and take awaye the relykes/ to the rebuke of the patrons/ and yf they wyll not be ſo ordered then muſte he aſke helpe of the temporaltye/ and in the.xv. artycle of the ſayde tytle patronus/ It ys aſked whether yt be expedyent in ſuche caſe that the more parte of the patrons agre hauyng reſpecte to al the patrōs/

or that yt ſuffyſe to haue the more parte in comparyſon of the leſſe parte as thus. There be. iiii. patrons two p̄ſent one clerke: the thyrde preſeteth a nother: & the fourth a nother/he that is preſented by.ii. hath not the more parte in cōparyſon of all the patrons for they be egal/but he hath the more parte hauyng reſpect to the other preſentementes/& to this queſtyon it is anſweryd that eyther the preſentement is made of the that be of a colage & there is requyſyte the more parte hauynge reſpecte to all the colage/or elles euery man preſentyth for hym ſelfe as comonly doo lay men that haue the patronage of theyr patrymony/& then it ſuffyſeth to haue the more parte in reſpecte of the other partes/doth not the lawe of Englande agre to theſe dyuerſytyes. ¶ Student. No verely. ¶ Doctour what order the ſhalbe taken in the lawe of Englāde if the patrons varye in theyr preſentemētes. ¶ Studēt. After the lawes of Englande this order ſhall be taken/if they be ioynt tenaūtes or tenauntes in comon of the patronage/& they vary in p̄ſentemēt the ordynary is not boūden to admyt none of theyr clerkes neyther the more parte nor the leſſe/& yf the. vi. monethes paſſe or they agre thē he may p̄ſent by the lapſe.

But he may not preſent within the .vi. monethes/ for yf he do they maye agre and brynge a quare impedit agaynſte hym/ and remoue hys clerke/ and ſo the ordynarye ſhall be as a dyſtourboure. And yf the patrons haue the patronage by dyſcente as coperceuers then ys the ordynarye bounde to admyt the clerke of the eldeſt ſyſter for the eldeſt ſhall haue the prefermēt in the lawe yf ſhe wyll/ and then at the nexte auoydaunce the nexte ſyſter ſhall preſente and ſo by turne one ſyſter after a nother tyll all the ſyſters or theyr heyres haue preſented/ and then the eldeſt ſyſter ſhall begyn agayne/ and thys ys called a preſentynge by turne/ and it holdeth alway bytwene coperceuers of an aduouſon/ excepte they agre to preſente togyder/ or that they agre by compoſycyon to preſente in ſome other maner/ and yf they do ſoo that agrement muſt ſtande/ but thys muſt be alwaye excepte that yf at the fyrſt auoydaunce that ſhall be after the dethe of the comon aunceſtre the kynge haue the warde of the yongeſt doughter/ that then the kynge by hys prerogatyue ſhall haue the preſentement. And at the nexte auoydaūce the eldeſt ſyſter and ſoo by turne. But yt ys to

Underſtande that if after the deth of the comon aunceſtre the chyrche voydeth and the eldeſt ſyſter preſenteth togyder with a nother of the ſyſters / and the other ſyſters euery one in theyr owne name or togyder that in that caſe the ordynarye ys not bounden to receyue none of theyr clerkes but maye ſuffre the chyrche to renne in to the laps as it ys ſayd before / for he ſhall not be bounde to receyue the clerke of the eldeſt ſyſter but where ſhe preſenteth in her owne name And in thys caſe where the patrones varye in preſentement the chyrche ys not properlye ſayd litigiouſe ſo that the ordynarye ſholde be boude at hys peryll to dyrecte a wrytte to enquere (de iure patronatus / for that wrytte lyeth where two preſente by ſeuerall tytles / but theſe patrons preſent all in one tytle / and therfore the ordynarye maye ſuffre yt to paſſe yf he wyll in to the laps / and thys maner of preſentementes muſte be obſerued in thys realme in lawe and conſcyence.

¶ Howe longe tyme the patron ſhal haue to preſente to a benefyce.

The.xxxi.chapytre.

¶ Doctour. This queſtyon as asked in ſumma angelica in the tytle Jus patronatus: the .xvi. artycle / and there it is anſwered that yf the patron be a lay man that he ſhall haue .iiii. monethes / and yf he be a clerke he ſhall haue .vi. monethes. ¶ Student. And by the comon lawe he ſhall haue .vi. monethes whether he be a lay man or a clerke / and I ſe no reaſon why a clerke ſholde haue more reſpyte then a lay man: but rather the contrary. ¶ Doctoure. Fro what tyme ſhall the .vi. monethes be accounted.

¶ Student. That is in dyuers maners after the maner of the voydaunce / for yf the chyrche voyde by dethe / or creacyon / or ceſſyō / the .vi. monethes ſhall be countyd fro the dethe of the encūbent: or fro the creacyon or ceſſyon wherof the patron ſhall be compellyd to take notyce at his peryll / and yf the voydaunce be by reſygnacyon or depryuacyon then the .vi. monethes ſhall begyn when the patron hathe knowlege gyuen hym by the buſſhop of the reſygnacyon or depryuacyon. ¶ Doctour. what yf he haue knowlege therof & not by the buſſhop. ¶ Student. I ſuppoſe yt ſuffyſeth not. ¶ Doctoure.

vnyon is alſo a cauſe of voydaunce howe ſhal the.vi.monethes be rekenyd there. ¶ Studēt. There can no vnyon be made but the patrons muſt haue knowlege / and yt muſt be appoyntyd who ſhall preſent after that vnyon / that is to ſay / one of theym or bothe / eyther ioyntly or by turne one after a nother as the agrement ys vpon the vnyon / and ſyth the patron ys pryuy to the auoydaunce and ys not ygnoraunt of yt. the.vi.monethes ſhall be accōptyd fro the agrement. ¶ Doctour. I ſe wel by the reaſon that thou haſt made in this chapytre that ygnoraūce ſomtyme excuſyth in the lawe of Englande / for in ſome of the ſayd auoydaunces it ſhall excuſe the patrons as yt appereth by thy reaſons aboue: wherfore I pray the ſhewe me ſomwhat where ygnoraunce excuſyth in the lawe of englande and where not after thyne oppynyon. ¶ Student. I wyll with good wyll here after do as thou ſayſte yf thou put me in remembraunce thereof / But I wolde yet moue the ſomwhat ferther in ſuche queſtyons as I haue moued the before / concernyng the dyuerſytyes bytwene the lawes of Englāde & other lawes.

For there be many mo caſes thereof that haue ryght grete nede for the good order of conſcyence of many perſones to be reformed and to be brought in to one oppynyō bothe among ſpyrytuall and temporall / as it is in the caſe where doctours holde oppynyō that the ſtatutes of lay men that reſtrayne lybertye to gyue landes to the chyrche ſholde be voyde / and they ſaye ferther that yf yt were prohybyt by a ſtatute that no gyfte ſholde be made to foreyns / that yet a gyfte made to the chyrche ſholde be good / for they ſay that the inferyour may not take away the authorytye of the ſuperyoure and thys ſayenge ys dyrectly agaynſte the ſtatutes wherby yt ys prohybyt that landes ſholde not be gyuen in to mortmayne / and they ſay alſo that byqueſtes and gyftes to the chyrche muſt be determyned after the lawe canon & not after the lawes and ſtatutes of lay men / and ſoo they regarde moche to whome the gyfte ys made whether to the chyrche or to meke cauſes / or to comon perſones / and bere more fauoure in gyftes to the chyrche then to other / and the lawe of the realme beholdeth the thynge that ys gyuen and pretendeth that yf the thynge that ys gyuen be of landes or goodes that the determynacyō therof of ryght belongeth in thys realme to the kynges lawes whether yt be to ſpyrytuall man or temporall/to the chyrche or to other / and ſo ys grete dyuyſyon in thys behalfe when one preferreth his oppynyon and a nother hys/⁊ one thys iuryſdyccyon/and a nother that. And as yt ys to fere more of ſyngularytye then of charytye/ wherfore yt ſemyth that they that haue the gretteſt charge ouer the people / ſpecyally to the helth of theyr ſoules/are moſt bounde in conſcyence before other to loke to thys matter ⁊ to do that in theym ys in all charytye to haue it reformyd/not beholdynge the temporall iuryſdyccyon nor ſpyrytuall iuryſdyccyon but the comō welthe and quyetnes of the people / ⁊ that vndoutedly wolde ſhortlye folowe yf thys dyuyſyon were put away/whiche I ſuppoſe veryly wyll not be but that all men within the realme bothe ſpyrytuall and temporall be ordered and ruled by one lawe as to temporal thynges: not withſtandynge for as moche as the purpoſe of this wrytynge ys not to treate of thys matter therfore I wyll no ferther ſpeke thereof at thys tyme. ¶ Doctoure. Then I praye the procede to a nother queſtyon as thou ſayſte thy mynde is to doo. ¶ Student. I wyll with good wyll.

¶ If a mã be excommengyd whether he may in any caſe be aſſoyled without makynge ſatyſfaccyon. The.xxxii.chapytre.

¶ Student. In the ſumme called ſumma roſella in the tytle abſolucio quarta: the ſeconde artycle / it is ſayd that he that is excommunycate for a wronge yf he be able to make ſatyſfaccyõ ought not to be aſſoyled but he do ſatyſfye / and that they offende that doo aſſoyle hym / but yet neuertheles he is aſſoyled / and if he be not able to make amendes that he muſt yet be aſſoylyd takynge a ſuffycyent gage to ſatyſfye yf he be able here after / or elles that he make an othe to ſatyſfye if he be able. Theſe ſaynges in many thynges holde not in the lawes of Englande. ¶ Doctoure. I praye the ſhewe me wherein the lawe of the realme varyeth therefro. ¶ Student. If a man be excommunycate in the ſpyrytuall courte for det/treſpas/or ſuche other thynges as belong to the kynges crowne and to his royall dygnytye there he ought to be aſſoylyd without makyng any ſatyſfaccyō/for the ſpyrytuall courte excedyd theyr power in that they helde ple in thoſe caſes/and the party yf he wyll may therupon haue a premunire facias as well agaynſt the partye that ſuyd hym as agaynſt the Iuge. And therfore in this caſe they ought in conſcyence to make abſolucyon without any ſatyſfaccyon/for they not onely offendyd the partye in callynge hym to anſwere before theym of ſuche thynges as belong to the lawe of the realme/but alſo the kyng for ſuche ſutes may leſe grete aduauntages by the reaſō of the wryttes orygenalles Iudycyals fynes/amercyamentes/and ſuche other thynges as myght growe to hym yf ſuche ſutes had ben taken in his courtes accordyng to his lawes/and accordynge to thys ſayenge. It appereth in dyuers ſtatutes that if a man lay vyolent handes vpon a clerke ⁊ bete hym that for the betynge amendes ſhal be made in the kynges courte/⁊ for the layeng of vyolent hādes vpō the clerke amendes ſhall be made in the courte cryſtyen.

And therfore yf the iuge in the courte cryſtyen wolde awarde the partye to yelde damages for the betynge he dyd agaynſt the ſtatute/but admyt that a man be excommengyd for a thynge that the ſpyrytuall courte may awarde the partye to make ſatyſfaccyon of/as for the not inclosynge of the chyrche yarde/or for not apparellynge of the chyrche conuenyently. Then I thynke the partye muſte make reſtytucyon or lay a ſuffycyent cauſyon yf he be able or he be aſſoyled/but yf the partye offre ſuffycyent amendes and haue hys abſolucyon and the iuge wyll not make hym his letters of abſolucyon if the excommengement be of recorde in the kynges courte then the kynge may wryte vnto the ſpyrytuall iuge cōmaundyng hym that he make the partye his letters of abſolucyon vpō payne of a contempte/and yf the ſayd excommunycacyon be not of recorde in the kynges courtes then the partye maye in ſuche caſe haue his acyon agaynſte the Iuge ſpyrytuall for that he wolde not make hym hys letters of abſolucyon but yf he be not aſſoyled or yf he be not able to make ſatyſfaccyō/& therfore the iuge ſpyrytual wyll not aſſoyle hym what the kynges lawes may do in that caſe I am ſomwhat in doute/ & wyll not moche ſpeke of it at this tyme/ but as I ſuppoſe he maye as well haue hys accyon in that caſe for the not aſſoylynge hym as where he ys aſſoyled and that the iuge wyll not make hym hys letters of abſolucyon/ and I ſuppoſe the ſame lawe to be where a mā is accurſed for a thynge that the iuge had no power to accurſe hym in/ as for det/ treſpas/ or ſuche other.

¶ Doctour. There he may haue other remedyes as a premunire facias or ſuche other/ and therfore I ſuppoſe the other accyon lyeth not for hym. ¶ Student. The iuge and the partye may be ded/ and then no premunire lyeth/ and thoughe they were alyue and were condempned in a Premunire/ yet that ſholde not auoyde the excommengement/ and therfore I thynke the accyon lyeth ſpecyally yf he be therby delayed of accyons that he myght haue in the kynges courte yf the ſayde excommengement had not ben.

¶ whether a prelate maye refuſe a legacye.

The.xxviii.chapytre.

The.xxxiii.chapytre.

¶ Student. yt is moued in the ſayd ſume named Roſella in the tytle alienacio .xx. the .vi. artycle whether a ꝑlate maye refuſe a legacye/ wherein dyuers oppynyons be recytyd; there which as me thynke haue nede after the lawes of the realme to be more playnly declaryd.

¶ Doctour. I pray the ſhew me what the law of the realme wyl therin. ¶ Studẽt. I thinke that euery ꝑlate ⁊ ſuffereyn that may onely ſue ⁊ be ſuyd in his own name as abbots: pryours: ⁊ ſuch other may refuſe any legacy that ys made to the houſe: for the legacy is not ꝑfyte tyll he to whõ it is made aſſẽt to take it: for els yf he myght not refuſe it he myght be cõpellyd to haue landes wherby he myght ī ſom caſe haue grete loſſe But thẽ if he intẽde to refuſe he muſt as ſone as his tytle by the legacy falleth relinquiſſhe to take the ꝓfytes of the thyng byquethed/ for if he ones take the ꝓfytes therof he ſhal not after refuſe the legacy: but yet his ſucceſſour may if he wyl refuſe the takyng of the ꝓfytes to ſaue the houſe fro yeldyng of damages or fro arrerages of rẽtes if any ſuche be: ⁊ lyke lawe is of a remayndre as is in a legacy: for though in the caſe of a remayndre ⁊ alſo of a deuyſe as moſt men ſay the fre holde is caſte vpon hym by the lawe whẽ the remayndre or deuyſe falleth: yet it is in his lyberty to refuſe the takyng of the ꝓfytes ⁊ to refuſe the remayndre or deuyſe yf he wyl as he myght do of a gyft of lãdes or goodes/ for if a gyft be made to a mã that refuſeth to take it/ the gyft is voyde: ⁊ if it be made to a mã that is abſẽt the gyfte taketh not effecte in hym tyll he aſſent: no more thẽ if a mã dyſſeaſe one to another mãnes vſe/ he to whoſe vſe the dyſſeaſõ is made hath no thyng in the lande ne is no dyſſeaſoure tyll he agre. And to ſuche dyſſeaſons ⁊ gyftes an abbot or pryour may dyſagre as well as any other mã: but after ſome mẽ a buſſhop of a deuyſe or remayndre that ys made to the buſſhop ⁊ to the deane ⁊ chapitre nor a deane ⁊ a chapytre of a deuyſe or remayndre made to thẽ: ne yet the maſter of a colage of ſuch a deuyſe or remayndre made to hym ⁊ to his bretherne/ maye not dyſagre without the chapytre or bretherne/ for the buſſhop of ſuch lãdes as he hath with the deane ⁊ chapytre: ne the deane nor mayſter of ſuche landes as they haue with the chapytre may not anſwere without the chapytre ⁊ bretheryn: ⁊ therfore ſome ſay that yf the deane or mayſter wyl refuſe or dyſclayme in the landes that they haue by the deuiſe or remaidre that that dyſclaymour without the chapitre or bretheryn is voyd

And therfore yt ys holden in the lawe that yf a buſſhop be vouched to warrauntye and the tenaunt byndeth hym to the warrauntye by reaſon of a leaſe made to hym by the buſſhop and by the deane and the chapytre yeldyng a rente / that in that caſe the buſſhop may not dyſclayme in that reuercyō without the aſſent of the deane and chapytre / But yet yf a reuercyon were graunted to a deane and a chapytre ⁊ the deane refuſe / the graunt is voyde / and ſo it appereth that a deane may refuſe to take a gyft or graūt of landes or goodes or of a reuercyon made to hym and to the chapytre and that yet he maye not dyſagre to a remayndre or deuyſe / and the dyuerſytye ys bycauſe the remayndre ⁊ deuyſe be caſt vpō hym without any aſſent / wherunto neyther the deane nor the chapytre by theym ſelfe maye in no wyſe dyſagre without the aſſent of the other / but a gyfte or graunt ys not good to theym without they bothe aſſente / and in ſuche gyftes as I ſuppoſe an infaunt maye dyſagre as well as one of full age / but if a woman couert dyſagre to a gyfte and the huſbāde agre that gyfte ys good. ¶ Doctour. what yf the landes in that caſe of a man and hys wyfe be charged with damages / or be charged with more rent then the lande is worth / and the huſbande dye ſhall the wyfe be charged to the damages or to the rente. ¶ Student. I thynke nay yf the wyfe refuſe the occupacyon of the grounde after her huſbandes deth / and I thynke the ſame lawe to be yf a leaſe be made to the huſbande and to the wyfe yeldynge a gretter rente then the lande is worth that the wyfe after the huſbandes dethe may refuſe the leaſe to ſaue her fro the payment of the rente / & ſo may the ſucceſſour of an abbot. ¶ Doctoure. And yf the huſbande in that caſe ouerlyue the wyfe and then make his executours and dye / whether maye hys executours in lyke wyſe refuſe the leaſe. ¶ Student. yf they haue goodes ſuffycyent of theyr teſtatoure to paye the rente I thynke they may not refuſe it / but yf they haue not goodes ſuffycyēt of theyr teſtatours to pay the rente to the ende of the terme / I thynke yf they relynquyſſhe the occupacyon they maye by ſpecyall pledynge dyſcharge theym ſelfe of the rent and the leaſe / and yf they do not they may lyghtly charge theym ſelfe of theyr owne goodes. And yf a leaſe be made for terme of lyfe the remayndre to an abbot for terme of the lyfe of Iohan at ſtyle / reſeruynge a gretter rente then the lande ys worthe / and after the tenaunte for terme of lyfe dyeth the abbot may refuſe the remayndre for the cauſe before rehercyd / and in caſe that the abbot aſſente to the remayndre wherby he ys chargyd to the rente durynge the tyme that he ys abbot / and after he dyeth or ys depoſyd lyuynge the ſayd Iohan at ſtyle / in that caſe hys ſucceſſoure may dyſcharge hym ſelfe by refuſynge the occupacyon of the lande as ys afore ſayd. But I thynke that yf ſuche a remayndre were made to a deane / and to the chapytre / ⁊ the deane agre without the aſſente of the chapytre that in that caſe the deane ⁊ the chapytre may afterwarde dyſagre to the remayndre: and that the acte of the deane without the aſſente of the chapytre ſhall not charge the chapytre in that behalfe / and thus yt apperyth though the meanynge of the ſayd chapytre and artycle in the ſayde ſumme be / that a prelate maye not dyſagre to a legacye for hurtynge of the houſe / yet he maye after the lawes of the realme dyſagre thereto where yt ſholde hurte hys houſe. And yf in a precipe quod reddat there be but one tenaunt be he ſpyrytuall or temporall / and he refuſe by waye of dyſclaymoure in ſuche caſe where may dyſclayme by the lawe / there the lande ſhall veſte in the demaūdaunt / & yf there be two tenauntes then yt ſhall veſte in hys felowe / yf he wyll take the hoole tenauncye vppon hym / or elles yt ſhall veſte in the demaundaunt.

But yf an abbot or a laye man refuſe the takynge of the profytes / and ſhewe a ſpecyall cauſe why yt ſholde hurte hym yf he dydde aſſente and be thereby dyſchargyd / In whome the lande ſhall thenne veſte yt ys more doute whereof I wyll noo ferther ſpeke at thys tyme. And thus yt apperyth by dyuerſe of the caſes that be put in thys chapytre that he that ys ygnoraunte in the lawe of the realme / ſhall lacke the trewe Juggemente of conſcyence in many caſes / For in many of theſe caſes that that may be done therein by the lawe muſt alſo be obſeruyd in conſcyence. &c.

¶ whether a gyfte made vnder a cōdycyon be voyde yf the ſouereyne onely breke the condycyon. The.xxxiiii.chapytre.

¶ Student. In ſumma roſella in the tytle alienacio / the.xii.artycle ys aſkyd thys queſtyon whether a gyfte made vnder a certayne forme may be auoyded or reuokyd bycauſe the prelate or ſouereyne onely dyde breke the forme / and it ys there anſweryd that yt may not for that the dede of the prelate onely ought not to hurte the chyrche / and yf thoſe wordes vnder a maner be vnderſtande of a gyfte vpon cōdycyon as they ſeme to be / then the ſayd ſolucyon holdeth not in thys realme neyther in lawe nor conſcyence.

¶ Doctoure. what ys then the lawe of Englande yf a man enfeffe an abbot by dede indentyd vpon condycyon that yf the abbot paye not to the feffour a certayne ſome of money at ſuch a day / that thē yt ſhall be lawfull to the feffour to reentre / and at that daye the abbot fayleth of hys payment / may the feffour lawfully reentre and put out the abbot. ¶ Student. ye verely for he had ryght to the lande / but by the gyfte of the feffour and hys gyfte was condycyonell and therfore yf the condycyon be broken yt ys lawfull for the feffoure to reentre and to take hys lande agayne and to holde yt as in hys fyrſt eſtate / by which reentre after the lawes of the realme he dyſprouyth the fyrſt lyuerey of ſeaſō and all the meane actes done bytwene the fyrſt feffement and the reentre / and yt forcyth lytell in the lawe in whome the defaute be that the cōdycyon was not performyd whether in the abbot or in his couent or in bothe / or in any other perſone what ſo euer he be / excepte yt be in the feffoure hym ſelfe. And yt ys grete dyuerſytye bytwene a clere gyfte made to an abbot without condycyon / and where yt ys made with cōdycyon / for when yt ys made without condycyon the acte of the abbot onely ſhall not by the comon lawe dyſheryte the houſe but yt be in very fewe caſes / but yet vpō dyuers ſtatutes the ſufferaunce of the abbot onely maye dyſheryte the houſe as by hys ceſſour / or by leuyeng of a croſſe vpon a houſe agaynſte the ſtatute therof made / in whiche caſe the houſe therby ſhall leſe the lande / and ſome ſay that by the comon lawe vpon hys dyſclaymour / vpon auourye a wryt of ryght of dyſclaymour lyeth/but yf the gyft be vppon condycyon yt ſtandeth neyther with lawe nor conſcyence that the abbot ſholde haue any more perfyte or ſure eſtate then was gyuen vnto hym/and therfore as the ſayd eſtate was made to the houſe vpon cōdycyon ſo that eſtate may be auoyded for not performyng of the condycyon/ ¶ I thynke verylye that thys that I haue ſayd ys to be holden in thys realme bothe in lawe and conſcyence/and that the decrees of the chyrche to the contrarye bynde not in thys caſe. But yf landes be gyuen to an abbot and to hys couent to the intente to fynde a lampe/or to gyue certayne almes to poore men/thoughe the intente be not in thoſe caſes fulfyllyd/yet the feffour nor hys heyres may not reentre for he reſeruyd no reentre by expreſſe wordes/ne in the wordes when he ſayth to the intente to fynde a lampe/or to gyue almes.&c. ys implyed no reentre/ne the feffour/nor hys heyres ſhall haue no remedye in ſuche caſes/oneleſſe it be within the caſe of the ſtatute of weſtmynſtre the ſecoude that gyueth the Ceſſauit de cantaria.

¶ whether a couenaunt made vpon a gyfte to the chyrche that yt ſhall not be alyenyd / be good. The .xxxv. chapytre.

¶ Student. In the ſayd ſumme called ſuma roſella in the ſayd tytle alienacio / the .xiii. artycle ys aſkyd thys queſtyon / whether a couenaunt made vpon a gyfte to the chyrche that yt ſhall not be alyenyd be good. And the ſame queſtyon ys mouyd agayne in the ſayd ſumme called roſella / in the tytle condicio the fyrſt artycle and in ſumma angelica / in the tytle donatio prima / the .xi. and .xii. artycles / and the intent of the queſtyon there ys whether not withſtandynge that the condycyon be good to ſome alyenacyōs whether that yet it be good to reſtrayne alyenacyons for the redempcyon of theym that be in captyuytye vnder the infydelles or for the gretter aduauntage to the houſe / ⁊ thoughe the better oppynyō be that the cōdycyon may not be brokē for redempcyon of thē that be in captyuytye yet it is in maner a hole oppinyō that it may be ſolde for the gretter aduaūtage to the houſe.

for it is ſayd there that yt may not be taken but that the intente of the gyuer was ſo/ and therfore they calle the condycyon that prohybytyth yt to be ſolde (condicio turpis) that ys to ſay/ a vyle condycyon/ and neuertheleſs as I take yt yf a condycyon maye reſtrayne any maner of alyenacyon that then yt ſhall as well be good to reſtrayne alyenacyons for the two cauſes before reherced as for any other cauſes/ and thoughe me thynketh that that condycyon ys good after the lawe of the realme that vpō gyftes to the chyrche reſtraynyth alyenacyōs/ yet I ſhall touche one reaſon that is made to the contrary/ for trouth yt ys that there ys a clere grounde in the lawe that yf a feffement be made to a comō perſon in fee vpon cōdycyon that the feffe ſhall not alyen to no mā that that cōdycyon ys voyde bycauſe yt ys contrary to the eſtate of a fee ſymple to bynde hym that hathe that eſtate that he ſholde not alyene yf he lyſte/ and ſome ſay that an abbot that hath lande to hym and to hys ſucceſſours hath as hygh and as perfyte a fee ſymple as hath a lay mā that hath lande to hym and to hys heyres/ ⁊ therfore they ſaye that yt ys as well agaynſt the lawe of the realme to ꝓhybyt that the abbot ſhall not alyene as yt ys to prohybyte a lay man therof/ and thoughe yt be therin true as they ſay as to the hyghnes of the eſtate. yet me thynketh there ys grete dyuerſytye bytwene the caſes concernyng theyr alyenacyons for when landes be gyuen in fee ſymple to a comon perſone the intente of the lawe ys that the feffe ſhall haue power to alyene/ and yf he doo alyene yt is not agaynſt the intente of the lawe ne yet agaynſt the intente of the feffoure/ but when landes be gyuen to an abbot and to hys ſucceſſours the intente of the lawe ys and alſo of the gyuer as yt ys to preſume that yt ſholde remayne in the houſe for euer / and therfore yt is called mortmayne/ that ys to ſaye a ded hāde as who ſayth that yt ſhall abyde there alway as a thynge ded to the houſe. And therefore as I ſuppoſe the lawe wyll ſuffre that condycyon to be good that ys made to reſtrayne / that ſuche mortmayne ſholde not be alyenyd and that yet it may prohybyte the ſame cōdycyon to be made vpon a feffement made in fee ſymple to a man and to hys heyres/ for that ys the mooſt hyghe/ the moſt fre/ and the mooſt pureſt ſtate that ys in the lawe. But the lawe ſuffereth ſuche a co dycyon to be made vpo͂ a gyfte in tayle bycauſe the ſtatute prohybytyth that no alyenacyo͂ ſhold be made therof. And for as moche as the lawe ſufferyth ſuche a condycyon vppon a gyfte in mortmayne/that ys to ſay/that yt ſhall not be alyenyd/to be good/then yt iugeth the condycyon alſo accordynge to the wordes/that ys to ſay/yf the condycyon be generall that they ſhal alyene to noo man as thys caſe ys that it ſhal be taken generally accordynge to the wordes/and yt ſhall not be taken that the intente of the gyuer was other wyſe the͂ he expreſſyd in hys gyft though percaſe yf he were alyue hym ſelfe and the queſtyon were aſked hym whether he wold be contentyd yt ſholde be alyenyd for the ſayde two cauſes or not/he wolde ſaye ye/but when he ys ded noo man hath authorytye to interpretate hys gyfte otherwyſe then the lawe ſufferyth/ne otherwyſe the͂ the wordes of the gyfte be. And yf the condycyon be ſpecyall/that ys to ſaye/that the lande ſhall not be alyenyd to ſuche a man or ſuche a man/then the condycyo͂ ſhall be taken accordyng to the wordes/& then they may be alyenyd as for that condycyon to any other but to theym to whome it is expreſſe-tye prohybyte that the lande ſholde not be alyenyd to. And if the lãdes in that caſe be alyenyd to one that ys not excepte in the condycyon/ then he maye alyene the lande to hym that ys fyrſte exceptyd without brekynge of the condycyon/ for condycyons be taken ſtraytely in the lawe and without equytye. And thus me thynketh that bycauſe the ſayde condycyon ys generall and reſtreynyth all alyenacyons/ that yt maye not be alyenyd neyther by the lawe of the realme ne yet by conſcyence/ noo more for the ſayd two cauſes thẽ they may for any other cauſe/ and thys caſe muſte of neceſſytye be iuged after the rules and groundes of the lawe of the realme and after none other lawe.

¶ If the patrone preſent not within .vi. monethes who ſhall preſente.

The .xxxvi. chapytre.

¶ Student. In the ſayd ſmume called ſũma roſella in the tytle beneficium in principio yt ys aſked/ yf the patrone preſente not within .vi. monethes who ſhall preſente and within what tyme the preſentemente muſte be made.

And yt ys answeryd there that yf the patron present not within .vi. monethes that the chapytre shall haue .vi. monethes to present / & yf the chapytre present not within .vi. monethes that then the busshop shall haue other .vi. monethes. And yf he be neclygent / then the metropolytane shall haue other .vi. monethes / and if he present not / then the presentement ys deuolute to the patryarke. And yf the metropolytane haue no superyour then the presentement ys deuolute to the pope. And soo as yt ys sayde there the archebusshop shall supplye the neclygence of the busshop yf he be not exempte / and yf he be exempte the presentement immedyately shal fall to the pope. And as I suppose these dyuersytyes holde not in the lawes of the realme. ¶ Doctour. Then I pray the shewe me who shall present by the lawes of the realme yf the patron do not present within hys .vi. monethes. ¶ Student. Then for defaute of the patrone the busshoppe shall present / oneles the kynge be patrone / and yf the busshoppe present not within .vi. menethes / then the metropolytane shall present whether the busshoppe be exempte or not. And yf the metropolytan present not within the tyme lymyttyd by the lawe / the there be dyuers oppynyons who ſhall preſent / for ſome ſay that the pope ſhall preſent as yt ys ſayd before / & ſome ſay the kynge ſhall preſent.

¶ Doctour. what reaſon make they that ſaye the kynge ſholde preſent in that caſe.

¶ Student. This ys theyr reaſon / they ſaye that the kynge ys patrone peramounte of all the benyfyces within the realme. And they ſay further that the kynge and hys progenytours kynges of Englãde without tyme of mynde haue had authorytye to determyne the ryght of patronages in the realme in theyr owne courtes / and are bounden to ſe theyr ſubiectes haue ryght in that behalfe within the realme / and that in that caſe fro hym lyeth no appele. And then they ſay that yf the pope in thys caſe ſholde preſent that then the kynge ſholde not onely leſe hys patronage peramounte / but alſo that he ſholde not ſomtyme be able to doo ryght to hys ſubiectes.

¶ Doctoure. In what caſe were that.

¶ Student. It is in this caſe / the lawe of the realme ys / that yf a benyfyce falle voyde / that the patrone ſhall preſent within. vi. monethes: and yf he do not / that then the ordynarye ſhall preſent/prouydyd that yf the patrone preſent before the ordynarye put in hys clerke/that then the patrone of ryght ſhall inioye hys preſentement. And ſo it is/though the tyme ſholde fall after to the metropolytane or to the pope/and yf the preſentement ſholde fall to the pope: then thoughe the aduouſon abode ſtyll voyde/ſo that the patrone myght of ryght preſent/yet the patrone ſholde not knowe to whom he ſholde preſent/onleſſe he ſholde goo to the pope/and ſoo he ſholde fayle of ryght within the realme. And yf percaſe he wente to the pope and preſentyd an able clerke vnto hym/and yet hys clerke were refuſyd and a nother put in at the collacyon of the pope or at the preſentement of a ſtraunger/yet the patrone coulde haue noo remedye for that wronge within the realme/for the encumbent myght abyde ſtylle oute of the realme. And therefore the lawe wyll ſuffre noo tytle in thys caſe to fall to the pope.

And they ſaye that for a lyke reaſon yt ys that the lawe of the realme wyll not alowe an excōmengement that ys certyfyed in to the kynges courte vnder the popes bulles. For yf the partye offeryd ſuffycyente amendes / and yet coulde not opteyne hys letters of abſolucyon / the kynge ſholde not knowe to whome to wryte for the letters of abſolucyon / and ſo the partye coulde not haue ryght / and that the lawe wyll in noo wyſe ſuffre. ¶ Doctoure. The patrone in that caſe maye preſent to the ordynarye as longe as the chyrche ys voyde / and yf the ordynarye accepte hym not / the patrone maye haue hys remedye agaynſte hym within the realme / But yf the pope wyll putte in an encumbent before the patrone preſente / yt ys reaſon that he haue the prefermente as me ſemyth before the kynge. ¶ Student. when the ordynarye hathe ſurceſſyd hys tyme he hathe loſte hys power as to that preſentemente / ſpecyally yf the collacyon be deuolute to the pope. And alſo when the preſentement ys in the metropolytane he ſhall put in the clerke hym ſelfe and not the ordynarye / & ſo there ys no defaute in the ordynarye thoughe he preſent not the clerke of the patrone yf his tyme be paſt / & ſo there lyeth no remedye agaynſt hym for the patrone. ¶ Doctour. Though the encumbent abyde ſtyll out of the realme yet may a quare impedit tye agaynſt hym within the realme/ and yf the encumbent make defaute vpon the dyſtreſſe appere not to ſhewe his tytle/ then the patrone ſhall haue a wrytte to the buſſhop accordynge to the ſtatute/ and ſo he is not without remedy.

¶ Student. But in thys caſe he can not be ſomonyd/ attachyd/ nor dyſtraynyd within the realme. ¶ Doctoure. He may be ſomonyd by the chyrche as the tenaunt maye in a wrytte of ryght of auouſon. ¶ Student. There the auouſon ys in demaunde/ and here the preſentement is onely in debate/ and ſo he can not be ſomonyd by the chyrche here no more then yf yt were in a wryt of annuytye and there the como returne is (quod clericus eſt et beneficiatus no habens laicum feodum Vbi poteſt ſummoniri). And thoughe he myght be ſomonyd in the chyrche/ yet he myght neyther be attachyd nor dyſtraynyd there/ and ſoo the patrone ſholde be without remedye. ¶ Doctoure. And yf he were without remedye/ he ſholde yet be in as good caſe as he ſholde be yf the kyng ſholde preſent/ for if the tytle ſholde be gyuen to the kyng the patrone had loſt his preſentement clerely for that tyme though the chyrch abyde ſtyll voyde.

¶ Student. That is true/ but there the preſentement ſholde be taken fro hym by the lawe and here yt ſholde be taken fro hym agaynſt the lawe/ ⁊ there as the lawe coulde not helpe hym ⁊ that the lawe wyll not ſuffre. ¶ Doctoure. yet me thynketh alwaye that the tytle of the lape in ſuche caſe ys gyuen by the lawe of the chyrche ⁊ not by the tēporall lawe/ ⁊ therfore it forſyth not but lytell/ what the temporall lawe wyl in it as me ſemyth. ¶ Student. In ſuche countreys where the pope hath power to determyne the ryght of temporall thynges I thynke yt ys as thou ſayeſt/ but in thys realme it is not ſo. And the ryght of preſentement is a tēporall thynge ⁊ a temporal enherytaunce/ ⁊ therfore I thynke it belongyth to the kynges lawe to determyne/ ⁊ alſo to make lawes who ſhall preſent after the .vi. monethes/ as wel as before/ ſo that the tytle of examynacyon of ablytye or none ablytye be not therby taken fro the ordynaryes/ and in lyke wyſe yt ys of auoydaunce of benefycys/ that ys to ſay/ that yt ſhall be iuged by the kynges lawes when a benefyce ſhall be ſayd voyde and whē not/ ⁊ not by the lawe of the chyrche as when a persone ys made a buſſhop or acceptyth a nother benefyce without lycence/ or reſygneth/ or ys depryuyd / in theyſe caſes the comō lawe ſayth that the benefycys be & ſo they be voyde though a lawe were made by the chyrche to the cōtrary/ & ſo if the pope ſholde haue any tytle in thys caſe to preſent/ yt ſholde be by the lawe of the realme. And I haue not ſene ne herde that the lawe of the realme hathe gyuen any tytle to the pope to determyne any temporall thynge that may be lawfully determynyd by the kynges courte. ¶ Doctour. It ſemyth by that reaſon/ that thou haſt made now that thou preferryſt the kynges authorytye in preſentementes before the popes/ and that me thynketh ſholde not ſtāde with the lawe of god: ſyth the pope is the vycar generall vnder god. ¶ Student. That I haue ſayd prouyth not that / for the hygheſt prefermente in preſentementes ys to haue authorytye to examyne the abylytye of the perſone that ys preſentyd / for yf the preſentee be able/ yt ſuffyſyth to the dyſcharge of the ordynarye / by whome ſo euer he be preſentyd/ & that authorytye ys not denyed by the lawe of the realme to belonge alwaye to the ſpyrytuall iuryſdyccyon/but my meanynge ys that as to the ryght of preſentementes and to determyne who ought to preſente and who not and at what tyme / and when the chyrche ſhall be Iugyd to be voyde and when not/belongyth to the kynge and hys lawes / for elles yt were a thynge in vayne for hym to holde ple of aduouſons/or to determyne the ryght of patronage in hys owne courtes/and theyſe claymes ſemyth not to be agaynſt the lawe of god. And ſo me ſemyth in thys caſe the preſentemēt ys gyuen to the kyng. ¶ Student. And yf the kynge ſholde haue ryght to preſent then myght the chyrche happen to contynue voyde for euer for as we haue ſayd before noo tyme rennyth to the kynge in ſuche preſentementes. ¶ Studēt If any ſuche caſe happē of the kyng p̄ſent not: then may the ordynary ſet in a deputye to ſerue the cure as he may do whē neclygēce is in other that may p̄ſent & do not/& alſo it cā not be thought that the kyng whiche hath the rule & gouernaūce ouer the people not onely of theyr bodyes but alſo of theyr ſoules wyl hurte his cōſcyence & ſuffre a benefyce cōtynuelly to ſtāde without a curate no more thē he doth in auouſons of hys owne patronage.

The.xxxvii.chapytre.

¶ whether the preſentement and collacyon of all benefycys and dygnytyes voydynge at Rome onely belonge to the pope.

The.xxxvii.chapytre.

¶ Student. In the ſayd ſumme called ſūma roſella in the tytle beneficium primum/ in the .xviii. artycle. It ys ſayd that benefycys/ dygnytyes/ and perſonages voydyng in the courte of Rome maye not be gyuen but by the pope/ and lyke wyſe of the popes ſeruauntes and of other that come and goo fro the courte yf they dye in places nye to the courte within two days iourney all theyſe belonge to the pope/ but that after a moneth they to whome yt belongyth to preſent maye preſent by theym ſelfe onely or by theyr vycar generall if they be in farre partyes and theyſe ſayenges holde not in the lawes of the realme. ¶ Doctour. what is the cauſe that they holde not in thys realme as well as in all other realmes. ¶ Student. One cauſe ys this. the kynge in this realme accordynge to the auncyent ryght of hys crowne/ of all hys aduouſons that be of hys patronage owyth to preſente / And in lyke wyſe other patrons of benefyces of theyr preſentemente / and the ple of the ryght of preſentementes of benefyces within thys realme belonge to the kynge and hys crowne. And theyſe tytles can not be takē fro the kynge and hys ſubiectes but by theyr aſſent / and ſo the lawe that ys made therin to put awaye that tytle byndeth not in thys realme / & ouer that before the ſtatute of .xxv. of edward the thyrde there was a grete inconuenyence & myſchyefe by reaſon of dyuers prouyſyons and reſeruacyons that the pope made to benefycys in thys realme contrary to the olde ryght of the kynge and other patrons in this realme as wel to archebuſſhopryches / buſſhopryches / deanryes / and abbeys / as to other dygnytyes and benefyces of the chyrche. And many tymes alyens thereby had benefyces within the realme that vnderſtode not the Englyſſhe tonge / ſoo that they coulde not counſayle ne comforte the people when nede requyred. And by that occaſyon grete ryches was conuayed out of the realme / wherfore to auoyde ſuche inconuenyences / yt was ordeynyd by the ſayd ſtatute that all patrons as well ſpyrytuall as temporall ſholde haue theyr preſentementes frely/and in caſe that collacyon or prouyſyon were made by the pope in dyſturbaunce of any ſpyrytuall patron/that then for that tyme the kynge ſholde haue the preſentement/& yf yt were in dyſturbaunce of any lay patron that then yf the patrõ preſentyd not within the halfe yere after ſuche voydaunce nor the buſſhop of the place within a moneth after the halfe yere that thẽ the kynge ſholde haue alſo the p̃ſentement:& that the kyng ſholde haue the profytes of the benefyces ſo occupyed by prouyſyõ excepte abbeys & pryoryes & other houſes that haue colage & couent & there the colage & couent to haue the profytes/& bycauſe the ſtatute ys generall & exceptyth not ſuche benefyces as ſhall voyde in the courte of Rome or in ſuche other place as before apperyth/ther for they be taken to be within the prouyſyon of the ſayd eſtatute as wel as the benefyces that voyde within the realme/and all ꝓuyſours and executours of the ſayd collacyons and prouyſyons and all theyr attourneys notaryes & mayntenerrs ſhall be out of the proteccyõ of the kynge and ſhall haue lyke punyſſhment as they ſholde haue for executynge of benefytes voydynge within the realme. ¶ Doctour. But I can not ſe howe the ſayd ſtatute maye ſtande with cõſcyence that ſo farre reſtraynyth the pope of hys lybertye/ whiche as me ſemyth he ought in this caſe of ryght to haue. ¶ Student. Bycauſe as I ſuppoſe the patrons ought of ryght to haue theyr preſentementes vnder ſuche maner as they clayme theym in thys realme as I haue ſayd before/ & as in the .xxvi. chapytre of thys boke apperyth. And alſo for as moch as yt apperyd euydently that grete in conuenyence folowyd vpon the ſayd prouyſyons/ and that the ſayde eſtatute was made to auoyde the ſame/ whiche ſyth that tyme hathe ben ſuffered by the pope and hathe ben alwaye vſed in thys realme without reſyſtaunce that the ſayde ſtatute ſholde therefore ſtande wyth good conſcyence.

¶ If a houſe by chaunce falle vpon a horſe that ys borowyd who ſhall bere the loſſe.*.

The .xxxviii. chapytre.

The.xxxviii.chapytre.

¶ Student. In the sayd summe called ſūma roſella/in the tytle caſus fortuitus/in the begynnynge ys put thys caſe/yf a man lende to a nother a horſe whiche ys called there depoſitū and a houſe by chaunce falleth vpon the horſe/ whether in that caſe he ſhall anſwere for the horſe. And yt ys anſweryd that yf the houſe were lyke to falle that then yt can not be taken as a chaunce but as the defaute of hym that had the horſe delyueryd to hym/But yf the houſe were ſtronge and of lykelyhode and by comon preſumpcyon in no daunger of fallyng but that yt fell by ſodeyne tempeſt or ſuche other caſueltye/then yt ſhall be taken as a chaunce/and he that had the kepyng of the horſe ſhal be dyſchargyd/and though thys dyuerſytye agreeth with the lawes of the realme yet for the more playner declaracyon therof and for other lyke caſes and chaunces that may happen to goodes that a man hath in his kepyng that be not his owne. I ſhall adde a lytel more that ſhal be ſomwhat neceſſarye as me thynketh to the orderynge of conſcyence. Fyrſt a man may haue of a nother by way of loue or borowynge/money/corne/ wyne: and ſuche other thynges where the ſame thyng can not be redelyueryd yf it be occupyed but a nother thynge of lyke nature and lyke value muſt be redelyuered for yt/ and ſuche thynges be that they be lente to may by force of that lone vſe as hys owne. And therefore yf they peryſſhe yt ys at hys Ieoperdye ⁊ thys ys moſt properlye callyd a lone. Alſo a man may lende to a nother a horſe/ an oxe/ a carte/ or ſuche other thynges that may be redelyueryd agayne/ and they by force of that lone may be vſyd and occupyed reaſonablye in ſuche maner as they were borowyd for/ or as yt was agreed at the tyme of the lone that they ſholde be occupyed/ and yf ſuche thynges be occupyed otherwyſe then accordynge to the intente of the lone/ and in that occupacyon they peryſſhe in what wyſe ſo euer they peryſſhe/ ſo yt be not in defaute of the owner/ he that borowyd theym ſhal be chargyd therwith in lawe and conſcyence/ and yf he that borowyd theym occupye theym in ſuche maner as they were lente for/ ⁊ in that occupacyon they peryſſhe in defaute of hym that they were lente to/ then he ſhall anſwere for theym And yf they peryſſhe not thrughe his defaute/ then he that owyth theym ſhall bere the loſſe.

Alſo yf a mā haue goodes to kepe to a certayne day for a certayne recompence for the kepynge whether he ſhall ſtande chargyd or not chargyd after as defaute or noo defaute ſhall be in hym as before apperyth / and ſo yt ys yf he haue nothynge for the kepynge / but yf he haue for the kepynge and make promyſe at the tyme of the delyuerye to redelyuer theym ſauſe at hys peryll / thē he ſhall be chargyd with all chaunces that may fall. But yf he make that promyſe & haue nothyng for the kepynge / I thynke he ys bounde to noo ſuche caſueltyes / but that be wylfull and in hys open defaute / for that ys a nude or a nakyd promyſe wherupon as I ſuppoſe no accyon lyeth. Alſo yf a man fynde goodes of a nother yf they be after hurte or loſt by wylfull neclygence he ſhall be chargyd to the owner / but yf they be loſt by other caſueltye as yf they be layde in a houſe that by chaunce ys burnyd / or yf he delyuer theym to a nother to kepe that renneth awaye with theym I thynke he be dyſchargyd / and theſe dyuerſytyes holde moſt comonly vpon pledges or where a man hyeryth goodes of his neyghbour to a certayne daye for certayne money / and many dyuerſytyes be in the lawe of the realme what ſhall be to the Ieoperdye of the one ⁊ what of the other whyche I wyll not ſpeke of at thys tyme.

And by thys yt maye appere that as yt ys comonly holden in the lawe of Englande yf a comon caryar go by bywayes that be daungerous for robbyng / or dryue by nyght or in other inconuenyent tyme and be robbed / or yf he ouer charge a horſe whereby he fallyth in the water or otherwyſe ſoo that the ſtuffe ys hurte or empeyryd / that he ſhall ſtande chargyd for hys myſdemeanoure / and yf he wolde percaſe refuſe to carye yt / oneleſſe promyſe were made vnto hym that he ſhall not be chargyd for noo myſdemeanoure that ſholde be in hym / that promyſe were voyde / For yt were agaynſte reaſon and agaynſte good maners / and ſoo yt ys in all other cauſes lyke / And all theyſe dyuerſytyes be groũdyd by ſecũdarye concluſyons dyryuyed vppon the lawe of reaſon withoute any eſtatute made in that behalfe / And peraduenture the lawes and the concluſyons therein be the more playne and the more opyn/ For yf any ſtatute were made thereon / I thynke veryly moo doutes and moo queſtyons wolde ryſe vpon that ſtatute then dothe nowe when they be onely arguyd and Iugyd after the comon lawe.

¶ If a preeſt haue wonne moche by ſayenge of maſſe / whether he maye gyue thoſe goodes or make a wyll of theym.

The .xxxix. chapytre.

¶ Student. In the ſayd ſmume called ſūma coſella in the tytle clericus quartus/ the thyrde artycle/ ys aſked thys queſtyon yf a preeſt hath wonne moche goodes by ſayenge of maſſe whether he may gyue thoſe goodes or make a wyll of theym/ wherto yt ys anſweryd there that he may gyue theym or make a wyll of theym ſpecyally when a man byquethyth money for to haue maſſes ſayd for hym/ and that lyke lawe ys of ſuche thynges as a clerke wynnyth by the reaſon of hys offyce / For yt ys ſayd there that ſuche thynges come to hym by reaſon of hys owne perſone/whyche ſayenges I thynke accorde with the lawe of the realme. But for as moch as in the ſayd artycle and in dyuers other places of the ſayd chapytre and in dyuers other chapytres alſo of the ſayd ſummes/ ys put grete dyuerſytye bytwene ſuche goodes as a clerke hath by reaſon of hys chyrche/ and ſuche goodes as he hath by reaſon of hys perſone that he muſt dyſpoſe ſuche goodes as he hath by reaſon of hys chyrche in ſuche maner as ys apoyntyd by the lawe of the chyrche/ſo that he maye not dyſpoſe theym ſo lyberally as he maye the goodes that come by reaſon of hys owne perſone/ therfore I ſhall a lytell touche what ſpyrytual men maye do with theyr goodes after the lawe of the realme. Fyrſt a buſſhop of ſuche goodes as he hathe with the deane and the chapytre he maye neyther make gyfte nor byqueſte/but of ſuche goodes as he hath of hys owne by reaſon of hys chyrche or of the gyfte of his aunceſters or of any other/ or of hys patrymonye he maye bothe make gyftys and byqueſtys lawfullye. And an abbot of the goodes of his chyrche may make a gyfte & the gyfte ys good as to the lawe

But what yt ys in conſcyence that ys after the cauſe and intente ⁊ quantytye of the gyfte / for yf yt be ſoo moche that yt notablye hurtyth the houſe or the couent / or yf he gyue away the bokes or the chalyces / or ſuche other thynges as belonge to the ſeruyce of god / he offendyth in conſcyence / and yet he is not punyſſhable in the lawe / ne yet by a ſubpena after ſome menne in none other wyſe but by the lawe of the chyrche as a waſter of the goodes of hys monaſtery. But neuertheles I wyll not fully holde that oppynyon as to that that belongyth neceſſaryly to the ſeruyce of god / whether any remedye lye agaynſte hym or not / but remyt yt to the iugement of other. And a deane and a chapytre and a mayſter and bretherne of goodes they haue to theym ſelfe. And alſo of goodes that they haue with the chapytre and bretherne the ſame dyuerſytye holdyth as apperyth before of a buſſhoppe / and the deane and chapytre / excepte that in the caſe of a mayſter and bretherne the goodes ſhall be orderynyd as ſhal be aſſygnyd by the foundacyon. And moreouer of a parſone of a chyrche / Vycar / and chaunterye preeſt / or ſuche other / all ſuche goodes as they haue / as well ſuche as they haue by reaſon of the perſonage / vycarage / or chauntery / as that they haue by reaſon of theyr owne perſone they maye lawfully gyue and bequethe where they wyll after the comon lawe. But yf they dyſpoſe parte amonge theyr paryſſhens & parte to the buyldynge of chyrches / or gyue parte to the ordynarye / or to pore men / or in ſuche other maner as ys appoyntyd by the lawe of the chyrche they offende not therin / oneles they thynke them ſelfe bounden therto by duetye and by authorytye of the lawe of the chyrche / not regardynge the kynges lawes / for yf they do ſo yt ſemyth they reſyſt the ordenaunce of god / which hathe gyuen power to prynces to make lawes. But there as the Pope hathe ſouerayntye in temporall thynges as he hath in ſpyrytual thynges / there the goodes of preſtes muſte in conſcyence be dyſpoſyd as is conteynyd in the ſayd ſumme / but that holdyth not in thys realme / for the goodes of ſpyrytuall men be temporall in what maner ſoo euer they come to theym / and muſte be orderyd after the temporall lawe as the goodes of temporall men muſt be.

Howe be yt yf there were a ſtatute made in thys caſe of lyke effecte in many poyntes / as the lawe of the chyrche ys / I thynke yt were a ryght good and a profytable ſtatute.

¶ Who ſhall ſuccede a clerke that dyeth inteſtate. The.xl.chapytre.

¶ Student. In the ſayd ſumme called roſella in the chapytre clericus quartus / the.vii.artycle / ys aſkyd thys queſtyon / who ſhall ſuccede to a clerke that dyeth inteſtate. And yt ys anſweryd that in goodes gotten by reaſon of the chyrche the chyrche ſhall ſuccede / But in other goodes hys kynneſmen ſhall ſuccede after the order of the lawe / and if there be no kynneſmē then the chyrche ſhall ſuccede. And yt ys there ſayd ferther that goodes gotten by a chanon ſecular by reaſon of hys chyrche or prebent ſhall not go to hys ſucceſſoure in the prebent / but to the chapytre. But where one that ys beneſyced ys not of the congregacyon / but he hathe a beneſyce clerely ſeperate / as yf he be a perſone of a paryſſhe chyrche or ys a preſydent or an archedeacon not benefyced by the chapytre / then the goodes gotten by reaſon of hys benefyce/ ſhall goo to hys ſucceſſoure and not to the chapytre/ and none of all theſe ſayenges holde place in the lawes of Englande. ¶ Doctoure. what ys then the lawe yf a perſone of a chyrch or a Vycar in the countrey dye inteſtate / or yf a chanõ ſeculer be alſo a perſone & haue good by reaſon therof and alſo by a prebende that he hath in a cathedrall chyrche and he dye inteſtate/ who ſhall haue hys goodes. ¶ Student. At the comon lawe the ordynarye in all theyſe caſes may admynyſtre the goodes & after he muſt commyt admynyſtracyon to the nexte faythfull frendes of hym that ys ded inteſtate that wyll deſyre yt as he ys bounden to do where lay men that haue goodes dye inteſtate. And yf no man deſyre to haue admynyſtracyon then the ordynarye may admynyſtre and ſe the dettes payde and he muſt beware that he paye the dettes after ſuche order as ys appoyntyd in the comon lawe/ for yf he paye dettes vpon ſymple contractes before an oblygacyon he ſhall be compellyd to pay the dette vpon the oblygacyon of hys owne goodes yf there be not goodes ſuffycyent of hym that dyed inteſtate/ and though it be ſufferyd in ſuche caſe that the ordynary may pay pounde and pounde lyke that ys to a porcyō the goodes amonge the dettours after hys dyſcrecyon/ yet by the rygoure of the comon lawe he myght be chargyd to hym that can fyrſt haue hys iugement agaynſte hym. And ferthermore by that ys ſayd afore in the laſte chapytre apperyth yf a buſſhop that hath goodes of hys buſſhopryche or of hys patrymony/ or a mayſter of a colage/ or a deane of goodes that they haue of theyr owne onely to theym ſelfe dye inteſtate/ that the ordynarye ſhall commyt admynyſtracyon therof as before apperyth/ ⁊ yf they make executours then the executours ſhall haue the mynyſtracyon thereof/ But the heyres nor the kynneſmē by that reaſon onely that they be heyres or of kynne to hym that ys deceſſyd ſhal haue no medlynge with hys goodes excepte yt be by cuſtome of ſome coūtreys where the heyres ſhall haue heyre lomes/ Or where the chyldren/ the dettes and legacyes payde/ ſhall haue a reaſonable parte of the goodes after the cuſtome of the countrey.

¶ If a clerke be promotyd to the tytle of hys patrymonye and after ſellyth hys patrymonye and after fallyth to pouertye whether ſhall he haue hys tytle therein or not.

The.xli.chapytre.

¶ Student. In the ſayd ſumme called roſella in the tytle clericus quartus/the.xxiiii.artycle yt ys aſkyd yf a clerke be promotyd to the tytle of hys patrymony whether he maye alyene it at hys pleaſure and whether in that alyenacyō the ſolēpnyty nedyth to be kepte that ys to be kepte in alyenacyon of thynges of the chyrche/and it ys anſweryd there that yt maye not be alyenyd no more thē the goodes of a ſpyrytuall benefyce yf yt be acceptyd for a tytle and expreſſely aſſygnyd vnto hym ſoo that yt ſholde goo as in to a thynge of the chyrche/excepte he haue after a nother benefyce whereof he maye lyue/But yf yt be ſecretly aſſygnyd to hys tytle ſome agree yt maye be alyenyd/and in thys caſe by the lawes of the realme yt maye be lawfully alyenyd whether yt be ſecretely or openly aſſygnyd to hys tytle/for the ordynarye ne yet the partye hym ſelfe after the olde cuſtomes of the realme haue no authorytye to bynde any inherytaunce by authorytye of the ſpyrytuall lawe / and therfore the lande after yt ys aſſygnyd and acceptyd to be hys tytle ſtandyth in the ſame ſelfe caſe to be bought: ſolde: chargyd: or put in execucyō as yt dyd before. And therfore yt ys ſomwhat to be meruaylyd that ordynaryes wyll admyt ſuche lande for a tytle to the intente that he that ys promotyd ſholde not fall to extreme pouertye or go openly a beggynge / without knowynge howe the comon lawe wyl ſerue therin / for of mere ryght all inherytaūce within thys realme ought to be orderyd by the kynges lawes / ⁊ inherytaunce can not be boūde in thys realme but by fyne or ſome other mater of recorde / or by feffement or ſuche other / or at leſte by a bargeyn that chaungyth an vſe. And ouer that to aſſygne a ſtate for terme of lyfe to hym that hath a fee ſymple before is voyde in the lawes of Englande without it be by ſuche a matter that yt worke by way of concluſyon or eſtopell / ⁊ in thys caſe ys no ſuche matter of concluſyon / and therfore all that ys done in ſuche caſe in aſſygnynge of the ſayd tytle ys voyde. Alſo there is no intereſt that a man hath in any maner landes or tenementes for terme of lyfe/for terme of yeres/or otherwyſe/but that he by the law of the realme may put away hys ryght therein yf he wyll. And then when thys man alyenyth hys lande generally yt were agaynſt the law of the realme that any intereſt of ſuche a tytle ſholde remayne in hym agaynſt his owne ſale/& there ys noo dyuerſytye whether the aſſygnement of the tytle were open or ſecret/and ſoo that tytle ys voyde to all intentys. And in lyke wyſe yf a houſe of relygyon or any other ſpyrytuall man that hathe grauntyd a tytle after the cuſtome vſyd in ſuche tytles ſell all the landes and goodes that they haue that ſale in the lawes of Englande ys good as agaynſt that tytle/and the byer ſhall neuer be put to anſwere to that tytle. Alſo ſome ſay that vpon the comon tytles that be made dayly in ſuche caſe that yf he fall to pouertye that hath the tytle he ys without remedy/for they be ſo made that at the comon lawe there ys no remedye for theym/and yf he take a ſute in the ſpyrytuall courte many men ſaye that a prohybycyon or a premunire lyeth. And therefore yt were good for ordynaryes in ſuche caſe to counſayle wyth theym that be lernyd in the lawe of the realme to haue ſuche a forme deuyſed for makynge of ſuche tytles/that yf nede be wolde ſerue theym that they be made vnto/or elles lette theym be promotyd without any tytle/ and to truſte in god that yf they ſerue hym as they ought to doo he wyll prouyde for theym to haue ſuffycyent for theym to lyue vpon. And beſyde theyſe caſes that I haue remembryd before/ there be many other caſes put in the ſayde ſummes for the well orderynge of conſcyence/ that as me thynketh are not to be obſeruyd in thys realme neyther in lawe nor in conſcyence.

¶ Doctour. Doſte thou the thynke that there was defaute in theym that drewe the ſayd summes and put therein ſuche caſes and ſuche ſolucyons that as thou thynkeſt hurte conſcyence/ rather then to gyue any lyght to yt/ ſpecyallye as in thys realme. ¶ Student. I thynke noo defaute in theym/but I thynke that they were ryght well and charytably occupyed to take ſo grete payne and laboure as they dyd therin for the welthe of the people and clerynge of theyr conſcyences/ for they haue thereby gyuen a ryght grete lyght in conſcyence to all countreys where the lawe Cyuyle and the lawe Canon be vſyd to temporall thynges. But as for the lawes of this realme they knewe theym not ne they were not bounde to knowe theym/and yf they had knowen theym yt wolde lytell haue holpen for the countreys that they mooſt ſpecyally made theyr treatyces for/and in thys countrey alſo they be ryght neceſſary and moche profytable to all men for ſuche doutes as ryſe in cōſcyence in dyuers other maners not cōcernynge the lawe of the realme. And I meruayle gretlye that none of theym that in thys realme are moſt bounden to do that in theym ys to kepe the people in a ryght iugement and in a clerenes of conſcyence haue done noo more in tyme paſte to haue the lawe of the realme knowen then they haue done/for thoughe ygnoraunce maye ſomtyme excuſe/yet the knowlege of the trouthe ⁊ the true iugement is moche better/⁊ ſomtyme thoughe ygnoraūce excuſyth in parte yt excuſyth not in all/⁊ therfore me thynkyth they dyd very wel if they wold yet be callers on to haue that poynt reformyd as ſhortly as they coulde:⁊ now bycauſe thou haſt wel ſatyſfyed my mynd in many of theyſe queſtyons that I haue made I purpoſe for thys tyme here to make an ende.

The.xxi.chapytre.

¶ Doctour. I praye the yet ſhewe me or that thou make an ende moo of the caſes that after thyne oppynyon be ſet in dyuers bokes for clerynge of conſcyence that as thou thynkeſt for lacke of knowynge of the lawes of the realme doo rather blynde conſcyence then gyue a lyght vnto yt/ for yf yt be ſo then ſurely as thou haſt ſayd yt wolde be reformyd/ for I thynke very ly the lawes of the realme in many caſes muſte in this realme be obſeruyd as well in cõſcyence as in the Iudycyall courtes of the realme.

¶ Student. I wyll with good wyll ſhewe to the ſhortely ſome other queſtyons that be made in the ſayd ſumme to gyue the and other occaſyon to ſe therin the oppynyons of the ſayd ſummes/ and to ſe ferther therupon howe tho oppynyons and the lawes of the realme do agre togyder. And yet beſyde theyſe queſtyons that I intende to ſhewe vnto the there be many other queſtyons in the ſayd ſũmes that had as grete nede to be more playnly declaryd accordynge to the lawes of the realme as thoſe that I ſhall ſhewe the hereafter/ or as I haue ſpoken of before/ but to the caſes that I ſhall ſpeke of hereafter I wyll ſhewe the nothyng of my concept in theym/ but wyll leue yt to other that wyll of charyty take ſome ferther payne in that behalfe

¶ Dyuers queſtyons taken out by the ſtudent of the ſummes called ſumma Roſella/ and ſumma Angelica/ whyche he thynkyth neceſſary to be lokyd vppon and to be ſene howe they ſtāde and agre with the lawe of the realme.

The.xxii.chapytre.

The fyrſte queſtyon ys thys/ whether a cuſtome maye breke a lawe poſytyue/ Summa Roſella/ titulo conſuetudo. Paragraffa.13.

¶.The ſeconde ys yf a man attayntyd or banyſſhyd be reſtoryd by the prynce/ whether ſhal that reſtytucyon ſtretche to the goodes/ ſumma Roſella in the tytle Dampnatus in principio.

¶ Item whether a man outlawyd/ abiuryd/ or Juged for felonye or treaſon/ or he that ys an aſciſmus may be ſlayne by eſtraungers/ and ſe lyke matter therto/ ſumma Angelica/ in the tytle aſciſmus. Paragraffa.2.

¶ Jtē whether the mayster shall be bounde by the acte oꝛ offence of his seruaunt oꝛ of his offycer/sūma Angelica/in the tytle dn̄s. Para.4.

¶ Jtē whether a vylleyn may gyue away his goodes/sūma angelica/in the tytle donacio.1. Paragraffa.2.

¶ Jtē whether an abbot maye gyue.⁊c. sūma angelica/in the tytle donacio.1. Pa.10.⁊.32.

¶ Item whether a woman couerte may gyue away any good/and yt ys answeryd/ summa angelica/in the tytle donacio.1.Paragraff.11. that she maye not without she haue goodes besyde her dowꝛye but onely in almes.

¶ Item yf a man do treason whether hys gyft of goodes after befoꝛe atteyndꝛe be good/summa angelica/in the tytle donacio.1.Para.12.⁊ yt semyth there naye/⁊ loke summa angelica/in the tytle alienacio.Paragraffa.24.

¶ Item yf a man wyttyngly make a cōtracte bytwene two kynnesfolke oꝛ other that maye not lawfully marye togyder whether he hathe foꝛfet his goodes/summa angelica/in the tytle donacio.1.Paragraff.14.

¶ Item whether the father maye gyue to the sonne/summa angelica/in the tytle donacio.1.

Paragraff.19.and ſumma roſella/in the tytle donacio.prima.Paragraffa.42.

Itẽ whether a mã may gyue aboue.V.C.d. abſqꝫ inſinuacione/ſũma angelica/in the tytle donacio.i.Paragraffa.20.

¶Itẽ whether a gyfte ſhall be auoydyd by an ingratitude/ſũma roſella:ĩ the tytle donacio.i. Paragraffa.17.&.29.& there it is ſayd that the gyfte ys voyde by the lawe of nature/and loke ſumma angelica/in the tytle donacio.prima. Paragraffa.42.&.45.

¶Itẽ whether any gyft bytwene the huſbãde & the wyfe maye be good/and it is ſayd ye whẽ the huſbande gyueth yt cauſa remuneracionis/ Summa roſella/in the tytle donacio.prima. Paragraffa..32.

¶Item yf a man make a wyll and entre in to relygyon whether he may after reuoke the wyl and yt ys ſayd that freres mynours may not/ and other may/ſumma roſella/in the tytle donacio.i.Pargraffa.35.in fine.

¶Item yf a man gyue a nother a towne with all the ryghtes that he hath in the ſame whether the patronage.&c.and the tythes paſſe/ſumma Roſella/in the tytle donatio.prima.Para.56.

The.xlii.chapytre.

¶ Item whether all that ys bought with the money of the chyrche be the chyrches/ Summa Roſella/ in the tytle eccleſia.1.Paragraffa.7.

¶ Item yf a gyfte made to a monaſterye may be auoydyd by that that the gyuer hath chyldren after the gyfte. Summa angelica/ in the tytle Donacio.1.Paragraffa.43.

¶ Item yf a man bye a thyng vnder the halfe pryce whether he be bounde by the lawe to reſtore.⁊c. Summa Roſella/ in the tytle emptio ⁊ Vendicio.Paragraffa.6.

¶ Item whether a comon thefe Vel communis depopulator agrorum may abiure/ ſumma Roſella/ in the tytle Emunitas.2.in pricipio. Et habetur ibi in fine quod licet leges excipiant plures perſonas tũ per ius canonicum legibus derogatum eſt.

¶ Item whether a man ſhall take the chyrche for grete enormyous offence that ys not murder nor felonye. Summa Roſella/ in the tytle Emunitas.2.Paragraffa.3.⁊.11.

¶ Item yf a man take one in the hyghe waye and drawe hym out and there betyth hym whether he ſhall haue the punyſſhment that ys ordeynyd for theym that ſtryke one in the hyghe way. Summa Roſella / in the tytle Emunitas.2.Paragraffa.6.

¶ Ite͂ whether he that takyth the chyrche may after for that offence be iugyd to dethe / ſumma Roſella / in the tytle Emunitas.2.Para.8.

¶ Item whether the buſſhoppes paleys be ſentuary. Summa Roſella / in the tytle Emunitas.2.Paragraffa.24.

¶ Item whether the dygnytye of a buſſhoppe or preſthode dyſcharge bondage / ſu͂ma Roſella in the tytle epiſcopus / in principio.

¶ Item whether a clerke ys bou͂de to pay any impoſycyons or tallages for hys patrymonye or otherwyſe. Summa Roſella / in the tytle exco͂municacio.1.diuiſione octaua. Paragra.4.⁊.5.⁊.6.et diuiſione nona. Paragraff.1.

¶ Item yf it were ordeynyd by ſtatute that yf a man ſelle.⁊c.he ſhall gyue to the kynge.ii.d. whether a clerke be bounde if he ſelle of his prebende / ſumma Roſella / in the tytle excommunicacio.1.diuiſione nona. Paragraffa.3.

¶ Item yf it be ordeynyd by ſtatute that there ſhall not be layde vpon a ded perſone but ſuche a certayne clothe / or thus many tapers or candels / whether the ſtatute be good and it is lefte for a queſtyon. Summa Roſella/in the tytle excōmunicatio.1.diuiſide.18.Para.8.in fine.

¶ Item yf a man make a leaſe of a mylle for terme of yeres and yt ys agreed that the leſſe ſhall grynde the leſſoure tolle fre durynge the terme/after the leſſour ys made an Erle or a Duke and hath gretter houſholde then before/ whether the leſſe be boūde therto.&c. Summa Roſella in the tytle familia.Paragraff.5.

¶ Item yf a mayſter wyll not paye hys ſeruaūtes wages that hath ſeruyd hym faythfully whether that the ſeruaunt maye take ſecretlye as moche goodes of the mayſters.&c.and yf he do whether he be bounde to reſtytucyon/ſūma Roſella/in the tytle familia.Paragraff.6.

¶ Itē thynges immouable of the chyrche may not be gyuen/ſūma Roſella/in the tytle feodū Para.1.& ſe there in principio what feodum ys.

¶ Itē whether the ſonnes baſterdes & the ſonnes lawfully begotten ſhall enheryte togyder. ſūma Roſella/in the tytle filius.Paragraff.1.

¶ Item whether the father & mother may ſucede to theyr baſterdes/ſumma Roſella/in the tytle filius.Paragraffa.4.

¶ Itē whether the father may leue any of hys goodes to his baſterde/ſūma roſella:in the tytle filius. Para.5. ⁊ ſumma roſella/in the tytle ſocietas. Paragraffu.23.

¶ Jtē whether the offence of the father ſhall hurte the ſonne in temporall thynges / ſumma Roſella/in the tytle filius. Paragraff.10.

¶ Jtē yf a mā gyue all his landes ⁊ goodes to his chyldren/whether a baſterde ſhall haue any perte/ ſūma roſella/in the tytle filius. Pa.22.

¶ Jtem to whom treaſoure founde belongyth ſumma roſella/in the tytle furtum. Parag.11.

¶ Jtē yf a dere or other wylde beſte that is ſoo ſore hurte that he maye be taken cometh into a nother mannes grounde whether yt be his that owyth the groūde or his that ſtrake hym/ ſūma roſella/in the tytle furtum. Paragraff.13.

¶ Jtem whether thefte be in a lytell thyng as well as in a grete thynge/ ſūma roſella / in the tytle furtum. Paragraffa.18.

¶ Jtem what payne a thefe ſhall haue / ſūma roſella/in the tytle furtū. Paragraff.22.

¶ Jtē the goodes of ded men go to the heyres ⁊ that of dampned men. s. de terris/ ſumma roſella/in the tytle hereditas. Paragraffa.1.

¶ Jtem whether a man ſhall be ſayd gyltye of murder by cōmaundement counſayle or aſſent.

Summa Roſella in the tytle homicidiū .2. per totum / and lyke matter ys homicidium .4. in principio and dyuers other caſes.

¶ Item a man maketh a pryuy cōtracte with a woman and after hath a chylde by her / ⁊ after maryeth a nother woman and hath a chylde ſhe not knowynge of the fyrſte contracte / whyche of the chyldren ſhall be hys heyre. Summa Roſella / in thr tytle Illegitimus. Paragraffa.3.

¶ Item whether the pope maye legytymate one to temporall thynges ⁊ to ſuccede. Sūma Roſella / in the tytle Illegitimus. Para.25.

¶ Item yf goodes be founde that were lefte of the owner as forſakyn who hathe ryght to theym. Summa Roſella / in the tytle Inuenta. Paragraff.2. And loke Summa Roſella / in the tytle furtum. Paragraff.17. And thus I make an ende of theyſe queſtyons / and bycauſe thou deſyreddyſt me i the.xxxi. chapytre to ſhewe the ſomwhat where ygnoraunce excuſyth in the lawe of the realme and where not / I wyll anſwere ſomwhat to thy queſtyon and ſo commyt the to god.

¶ where ygnoraunce of the lawe excuſyth in the lawes of Englande and where not.

The.xliii.chapytre.

¶ Student. Ignoraunce of the lawe thoughe yt be inuyncyble doth not excuſe as to the lawe but in fewe caſes / for euery man ys bounde at hys peryll to take knowlege what the lawe of the realme ys as well the lawe made by ſtatute as the comon lawe / but ygnoraunce of the dede whiche maye be callyd the ygnoraunce of the trouth of the dede may excuſe in many caſes.

¶ Doctour. I put caſe that a ſtatute penal be made and yt ys enactyd that the ſtatute ſhall be proclaymyd before ſuche a day in euery ſhyre / and yt ys not proclaymyd before the daye / and after the daye a man offendyth agaynſt the ſtatute ſhall he renne in the penalty. ¶ Student. I thynke ye / yf there be no ferther wordes in the ſtatute to helpe hym / that ys to ſay / that yf the proclamacyon be not made that no man ſhal be bounde by the ſtatute / and the cauſe is thys / there ys no ſtatute made in thys realme but by the aſſent of the lordes ſpyrytuall & temporall and of all the comons / that ys to ſaye / by the knyghtes of the ſhyre / Cytezens / and Burgeſes that be choſen by aſſente of the comons / whiche in the parlyament repreſente the eſtate of the hoole comons. And euery ſtatute there made ys of as ſtronge effecte in the lawe as yf all the comons were there preſent perſonallye at the makyng therof / and lyke as there nedyd noo proclamacyon yf all were there preſent in theyr owne perſone / ſoo the lawe preſumyth there nedyth no proclamacyon when yt ys made by theyr authorytye / ꝛ then when yt ys enactyd that yt ſhall be proclaymyd. ꝛc. that ys but of the fauoure of the makers of the ſtatute and not of no neceſſytye / and yt can not therfore be taken that theyr intente was that yt ſholde be voyde yf yt were not proclaymyd. Neuertheles ſome be of oppynyon that yf a man before the day appoyntyd for the proclamacyō offende the eſtatute that he ſholde not in that caſe be punyſſhed / for they ſay that the intente of the makers of the ſtatute ſhall be taken to be that none ſholde be punyſſhyd before that day / whiche ys a doute to ſome other / but admyt yt be as they ſay / yet he that in ſuche caſe ys ygnoraunt ys not excuſyd by the ygnoraunce of the lawe /

but bycauſe the intent of the makers excuſyth hym. ¶ Doctour. yt is enactyd in the. vii. yere of kyng Rychard the ſeconde the. vi. chapytre that euery ſhyryffe ſhall proclayme the ſtatute of wyncheſtre thre tymes euery yere in euery market towne to the intent that offenders ſhal not be excuſyd by ygnoraunce/ and yt ſemyth by thoſe wordes that yf no proclamacyon be made that the offender maye be excuſyd by ygnoraunce. ¶ Student. Some take the intente of that ſtatute to be that the people by that ꝓclamacyon ſhold haue knowlege of the ſtatute of wincheſtre to the intẽt that the forfeture therin may be taken as well in cõſcyence as in lawe/ and ſome take the ſtatute to be of ſuche effecte as thou ſpekyſt of/ that ys to ſay/ that no forfeture ſholde growe vpon the ſtatute of wyncheſtre agaynſt theym that were ygnoraunt but ꝓclamacyon were made accordynge to the ſayd ſtatute of Rychard. And yf yt be ſo taken then the ſtatute of wyn̄. ys of ſmale effecte agaynſt moſt parte of the people for certeyne it ys that the ſayd ꝓclamacyõ is not made/ but admyt yt be as they ſay/ then they that be ygnoraunt be excuſyd by the ſayd pertyculer eſtatute ſpecyally made ĩ that caſe ⁊ not by the generall rules of the lawe/and ſomtyme in dyuers ſtatutes penalles they that be ygnoraunt be excuſyd by the ſelfe ſtatute as yt ys vppon the ſtatute of Rychard the ſeconde the.xiii.yere/the ſeconde ſtatute & the laſt chapytre where yt ys enactyd that yf any perſone take a benefyce by prouyſyon that he ſhall be banyſſhed the realme and forfet all hys goodes/and that yf he be in the realme he auoyde within.vi.wekes after he hath acceptyd yt/and that none ſhall receyue hym that ys ſo banyſſhed after the ſayd.vi.wekes vppon lyke forfeture/yf he haue knowlege/& ſo he that hath no knowlege ys excuſyd by the expreſſe wordes of the ſtatute. And in lyke wyſe he that offendyth agaynſte Magna carta ys not excommengyd but he haue knowlege that yt ys prohybyt that he dothe/For they be onely excommengyd by the ſentence called/(ſentencia lata ſuper cartas) that dothe yt wylfully or that dothe yt by ygnoraunce/and correcte not theym ſelfe within.xv.dayes after they haue warnynge. And ſomtyme they that be ygnoraunt of a ſtatute be excuſyd fro the penaltye of a ſtatute bycauſe yt ſhall be takē that the intente of the makers of the ſtatute was that noone ſhall be bounde but they that haue knowlege/but that any man ſholde be dyſchargyd by ygnoraunce of the lawe onely for that he ys ygnoraunt. I know fewe cauſes excepte yt myght be applyed to Infauntys that be in theyr infauncye & within yeres of dyſcrecyon/for yf ygnoraunce of the lawe ſholde excuſe in the lawe many offenders wolde pretende ygnoraunce. ¶ Doctour. Shall an Infaunte that hath dyſcrecyon and knowyth good fro euyl be punyſſhed by a penall ſtatute that he ys ygnoraunte in. ¶ Student. yf the ſtatute be that for the offence he ſholde haue corporall payne I thynke he ſhall be excuſyd and haue no corporall payne/but I ſuppoſe that that ys not for the ygnoraunce/for thoughe he knewe the ſtatute and wyttyngly offendyd yet I thynke he ſhall haue no corporall payne as where he pledyth Joyntenauntcye by dede that ys founde agynſt hym/or yf he plede a recorde in aſſyſe & faylyth of yt at hys daye/but yt ys bycauſe the lawe preſumyth that yt was not the intente of the makers of the ſtatute that he ſholde haue that punyſſhment/but yf he be of yeres of dyſcrecyon to knowe good fro euyll/whether he ſhall then forfet the penaltye of the penall ſtatute yt ys more doute/for yt ys comonly holden that yf an infaunte had not ben exceptyd in the ſtatute of foriugement that the foriugement ſholde haue bounde hym / and ſoo ſhall hys ceſſer and hys leuyenge of a croſſe agaynſte the ſtatute/or yf he be a gardeyn of a pryſone and ſuffre a pryſoner eſcape he ſhall paye the dette bycauſe the ſtatutes be generall/ ⁊ yf he ſholde by tho ſtatutes be bounde within age lyke reaſon wyll that he maye by a ſtatute penall leeſe hys goodes. ¶ Doctoure. If an infaunte doo a murder or a felonye at ſuche yeres as he hathe dyſcreſcyon to knowe the lawe/ſhall he not haue the punyſſhmente of the lawe as one of full age. ¶ Student. I thynke yes/but that ys by an olde maxyme of the lawe for eſchewynge of murders and felonyes and ſo it is of a treſpas: but theyſe caſes renne not vpon the grounde of ygnoraunce/but with what acte infauntes ſhal be punyſſhable or not punyſſhable/ for the tendernes of theyr age thoughe they be not ygnoraunte. ¶ Doctoure. Be not yet knyghtes and noble men that are bounde mooſt properly to ſette theyr ſtudye to actes of chyualrye for defence of the realme/And huſbande men that muſte vſe tyllage and huſbandrye for the ſuſtenaunce of the comynaltye / and that maye not by reaſon of theyr laboure put theym ſelfe to knowe the lawe / dyſchargyd by ygnoraunce of the lawe. ¶ Student. No verylye for ſyth all were makers of the ſtatute the lawe preſumyth that all haue knowlege of that they make / as yt ys ſayd before / and as they be bounde at theyr peryll to take knowlege of the ſtatute that they make ſo be all that come after theym. And as for knyghtes and other nobles of the realme me ſemyth that they ſholde be bounde to take knowlege of the lawe as wel as any other within the realme excepte theym that gyue thē ſelfe to the ſtudye and exerſyſe of the lawe: and excepte ſpyrytuall iuges that in many caſes be bounde to take knowlege of the lawe of the realme as ys ſayd before in the .xxv. chapytre / For thoughe they be bounde to actes of chyualrye for defence of the realme / yet they be bounde alſo to the actes of Juſtyce / and that as yt ſemyth more then other be by reaſon of theyr grete poſſeſſyons and authoryte.

The.xiii.chappytre.

And for the well orderynge of theyr/ tenauntes/ ſeruauntes/ and neyghbours that many tymes haue nede of theyr helpe/ and alſo bycauſe they be ofte callyd to be of the kynges coũſayle: & to the general coũſayles of the realme where theyr counſayle ys ryght expedyent & neceſſary for the comon welth/ and therfore yf the noble mẽ of this realme wolde ſe theyr chyldren brought vp in ſuche maner that they ſholde haue lernynge and knowlegge more then they haue comonly vſyd to haue in tyme paſte/ ſpecyally of the groundes and princyples of the lawe of the realme wherin they be enheryte/ thoughe they had not the hyghe cunnynge of the hole body of the law/ but after ſuch maner as mayſter Forteſcue in hys boke that he intytylleth the boke de laudibus legum anglie) auertyſyth the prynce to haue knowlegge of the lawes of this realme/ I ſuppoſe yt wolde be a grete helpe hereafter to the mynyſtracyon of Juſtyce in thys realme a gret eſuretye for theym ſelfe/ & a ryght grete gladnes to all the people/ for certayne yt ys the more parte of the people wolde more gladly here that theyr rulers and gouernours entendyd to order theym with wyſdome and Juſtyce thẽ wyth power and grete retynues. But ygnoraunce of the dede many tymes excuſyth in the lawes of Englande. And I ſhall ſhortely touche ſome caſes thereof to ſhewe where yt ſhall excuſe and where yt ſhall not excuſe / and then the reder may adde to yt after hys pleaſure and as he ſhall thynke to be conuenyent.

¶ Certeyne caſes and groundes where ygnoraũce of the dede excuſyth in the lawes of Englande and where not.

The .xliiii. chapytre.

¶ Student. If a man bye a horſe in open market of hym that in ryght hath noo propertye in hym not knowynge but that he hathe ryght / he hath good tytle and ryght to the horſe / and that ygnoraunce ſhall excuſe hym / But yf he had bought hym oute of open market / or yf he had knowen that the ſeller had no ryght / the byeng in open market had not excuſyd hym. Alſo yf a mã reteyne a nother mãnes ſeruaũt not knowynge that he ys reteynyd wyth hym / that ygno raunce excuſyth hym bothe for the offence that was at the comon lawe agaynſte the maxyme that prohybytyd ſuche reteynynge of a nother mannes ſeruaunt. And alſo agaynſt the ſtatute of .xxiii. of Edwarde the .iii. whereby yt ys prohybyte vppon payne of inpryſonment that none ſhall reteyne no ſeruaunt that departyth within hys terme wythout lycence or reaſonable cauſe/ for yt hath ben alway taken that the intente of the makers of the ſayd ſtatute was that they that were ygnoraunt of the fyrſte reteynoure ſholde not renne in any penaltye of the ſtatute. And the ſame lawe ys of hym that reteynyth one that ys warde to a nother / not knowynge that he ys hys warde. Alſo yf homage be due and the tenaunt after that the homage ys due makyth a feffement / and after the lorde not knowynge of the feffement dyſtreynyth for the homage in the caſe that ygnoraunce ſhall excuſe hym of damagys in a Repleuyn / thoughe he can not auowe for the homage / but yf he had knowen of the feffement he ſholde haue yeldyd damagys for the wrongfull takyng. Alſo yf a man be bounde in an oblygacyon that he ſhall repayre the howſes of hym that he ys boũde to by ſuch a certayn tyme as ofte as nede ſhall requyre / and after the houſes haue nede to be repayryd but he that ys bounde knowyth yt not / that ygnoraunce ſhall not excuſe hym / for he hathe bounde hym ſelfe to yt / and ſoo he muſte take knowlege at hys peryll / but yf the condycyon had ben that he ſholde repayre ſuche houſes as he to whome he was bounde ſholde aſſygne / and after he aſſygneth certayne houſes to be repayryd / but he that ys bounde hathe no knowlege of that aſſygnement / that ygnoraunce ſhall excuſe hym in the lawe / for he hath not bounde hym ſelfe to noo reperacyons in certayne / but to ſuche as the partye wyll aſſygne / and yf he none aſſygne he ys bounde to none / and therfore ſyth he that ſholde make the aſſygnement ys pryuy to the dede / he is bounde to gyue notyce of hys owne aſſygnement / but yf the aſſygnemente had ben appoyntyd to a ſtraunger then the oblygatoure muſte haue taken knowlege of the aſſygnement at his peryl.

Alſo yf a man bye landes wherunto a nother hathe tytle whiche the byer knowyth not / that ygnoraunce excuſyth hym not in the lawe / no more thenne yt dothe of goodes.

Alſo yf a ſeruaunt come wyth hys mayſters horſe to a towne that by cuſtome maye attache goodes for dette/ and vpon a playnte agaynſte the ſeruaunt an offycer of the towne by informacyon of the partye attachyth the mayſters horſe thynkynge that yt were the ſeruauntes horſe/ that ygnoraunce excuſyth hym not/ for when a man wyll doo an acte as to entre in/ to lande/ ſeaſe goodes/ take a dyſtreſſe or ſuche other/ he muſt by the lawe at hys peryll ſe that that he doth be lawfully done as in the caſe before rehercyd. And in lyke wyſe if a ſhyryffe by a repleuyn delyuer other beeſtes then were dyſtreynyd/ thoughe the partye that dyſtreynyd ſhewyd hym they were the ſame beeſtes/ yet an accyon of treſpas lyeth agaynſt hym/ and ygnoraunce ſhall not excuſe hym for he ſhall be compellyd by the lawe as al offycers comonly be to execute the kynges wrytte at hys peryll accordynge to the tenoure of it and to ſe that the acte that he dothe be lawfully done. But otherwyſe yt ys after ſome men yf vpon a ſomons in a precipe quod reddat the ſhyryffe by informacyon of the demaundaunt ſomonyth the tenaunt in another mannes lande thynkynge yt ys the tenaun tes lande there they ſay he ſhall be excuſyd / for in that caſe he dothe not ſeaſe the lande ne take poſſeſſyon in the lande / but onely dothe ſomon the tenaunt vpon the lande / and the wrytte cōmaundyth hym not that he ſhall ſomon the tenaunt vpon hys owne lande but generally that he ſhall ſomon hym & namyth not in what lande and then by an olde maxyme in the lawe yt ys taken that he ſhall ſomon hym vppon the lande in demaunde / and therfore thoughe he myſtake the lande and be ygnoraunt of yt / yet yf the demaundaunt enforme hym that that ys the lande that he demaūdyth that ſuffyſyth to the ſhyryffe as to hys entre / for the ſomonynge as they ſay thoughe yt be not the tenaūtes lande. And here I make an ende of theyſe queſtyons for thys tyme. ¶ Doctoure. I praye the yet or we departe take a lytell more payne at my deſyre.

¶ Studēt. what is that. ¶ Doctour. That thou woldeſt ſhewe me thy mynde in dyuers caſes of the lawe of the realme / whiche as me ſemyth ſtande not ſoo clerely with conſcyence as they ſholde doo. And I wolde gladly here thy conceyte therein howe they may ſtande with cōſcyence. ¶ Student. Put the caſe and I ſhall with good wyll ſaye as I thynke to theym.

¶ The fyrſt queſtyon of the doctour whether the warantye of the yonger brother that ys taken as heyre bycauſe it ys not knowen but that the eldeſt brother ys ded / be in conſcyence a barre to the elder brother as yt ys in the lawe.

The.xlv.chapytre.

¶ Doctoure. A man ſeaſyd of landes in fee hath yſſue two ſonnes the eldeſt ſonne goth beyonde the ſee and bycauſe a comō voyce is that he ys ded the yonger brother is taken for heyre / the father dyeth the yonger brother entreth as heyre and alyenyth the lande with a warantye and dyeth without any heyre of hys body / and after the elder brother comyth agayne and claymyth the lande as heyre to hys father / whether ſhall he be barryd by that warantye in conſcyence as he ys in the lawe. ¶ Student. It is an olde maxym in the lawe that the eldeſt brother ſhall in that caſe be barryd. And that maxym ys taken to be of a ſtronge effecte in the lawe as yf yt were ordeynyd by ſtatute to be a barre. And yt is as olde a lawe that ſuche a warantye ſhall barre the heyre as yt ys that the enherytaunce of the father ſhall onely deſcende to the eldeſt ſonne. And ſyth the lawe ys ſo why ſhold not then conſcyence folowe the lawe as wel as yt doth in that poynte that the eldeſt ſonne ſhall haue the lande. ¶ Doctoure. For there apperyth no reaſonable cauſe wherupō that maxym myght haue a lawfull begynnynge / for what reaſon ys yt that the warantye of an aunceſtre that hath no ryght to the lande ſholde barre hym that hath ryght. And yf yt were ordeynyd by ſtatute that one man ſholde haue a nother mannes lande and noo cauſe ys expreſſyd why he ſholde haue yt / in that caſe thoughe he myght holde the lande by force of that ſtatute / yet he coulde not holde yt in conſcyence without there were a cauſe why he ſholde haue yt / and theyſe caſes be not lyke as me ſemyth to the forfeture of goodes by an outlawrye / for I wyll agree for thys tyme that that forfeture ſtandyth with conſcyence bycauſe it ys ordeynyd for mynyſtracyon of Juſtyce/ but I can not perceyue any ſuche cauſe here: and therfore me thynkyth that thys caſe is lyke to the maxyme that was at the comon lawe of wrecke of the ſee/ that is to ſay that yf a mānes goodes had ben wreckyd vpō the ſee that the goodes ſholde haue ben immedyatly forfetyd to the kynge. And yt ys holden by all doctours that that lawe ys agaynſt conſcyence excepte certeyne caſes that were to longe to reherce nowe. And yt was ordeynyd by the ſtatute at weſtmynſtre the fyrſt: that if a dogge or cat come alyue to the lande that the owner yf he proue theym within a yere and a daye to be hys ſhall haue thrym wherby the ſayd lawe of wreckes of the ſee ys made more ſufferable thē yt was before/ and ſo me thynkyth in thys caſe that thys warantye ys no barre in conſcyence thoughe it be a barre in the lawe. ¶ Student. I praye the kepe that caſe of wrecke of the ſee in thy remembraunce and put yt hereafter as one of thy queſtyons and thereupon ſhewe me thy ferther mynde therein/ and I ſhall wyth good wyll ſhewe the myne/ and as to this caſe that we be in nowe me thynketh the maxyme wherby the warrantye ſhall be a barre ys good and reaſonable/for yt ſemyth not agaynſt reaſon that a man ſhall be bounde as to temporall thynges by the acte of hys aunceſtre to whome he ys heyre/for lyke as by the lawe yt ys ordeynyd that he ſhall haue aduauntage by the ſame aunceſtre and haue all hys landes by dyſſent yf he haue any. Ryght ſo yt ſemyth that yt ys not vnreaſonable thoughe the lawe for the pryuyty of blode that ys bytwene theym ſuffre hym to haue a dyſaduauntage by the ſame aunceſtre/but yf the maxyme were that yf any of his aunceſtres thoughe he were not heyre to hym made ſuche a warrantye that yt ſholde be a barre/I thynke that maxyme were agaynſt cõſcyence/for in that caſe there were no grounde nor conſyderacyon to proue howe the ſayde maxyme ſholde haue a lawfull begynnynge/wherefore yt were to be taken as a maxyme agaynſte the lawe of reaſon/but me thynketh yt ys otherwyſe in thys caſe for the reaſon that I haue made before.

¶Doctoure. If the father bynde hym and hys heyres to the payment of a dette & dye in that caſe the ſonne ſhall not be bounde to pay the dette oneles he haue aſſes by dyſſent fro his father. And ſo I wolde agree that yf thys man had aſſes by dyſcent fro the aunceſtre that made the warrantye/that he ſholde haue be barryd: but elles me thynkyth it ſholde ſtande hardly with conſcyence that yt ſholde be a barre.

¶ Student. In that caſe of the oblygacyon the lawe ys as thou ſayſte/and the cauſe ys for that the maxym of the lawe in that caſe is none other but that he ſhal be chargyd yf he haue aſſes by dyſcent/but yf the maxyme had ben generall that the heyre ſholde be bounde in that caſe without any aſſes/or yf yt were ordeynyd by ſtatute that yt ſholde be ſoo/I thynke that bothe the maxyme and the ſtatute ſholde well ſtande with cōſcyence. And lyke lawe ys where a man ys vouchyd as heyre he may entre as he that hath no thynge by dyſcente/but where he claymyth the lande in hys owne ryght there the warrantye of hys aunceſtre ſhall be a barre to hym thoughe he haue noo aſſeſe fro the ſame aunceſtre/and thoughe yt be ſayd in Ezechyel the.xviii.chapytre/That the ſonne ſhall not bere the wyckednes of the father/ That ys vnderſtande ſpecyallye/ But as to temporall goodes the oppynyon of doctoures ys/ that the ſonne ſometyme maye bere the offence of hys father. ¶ Doctoure. Nowe that I hahaue herde thy mynde in thys caſe I wyll take aduyſemente therein tyll a better leaſure/ And wyll nowe procede to a nother queſtyon. ¶ Student. I praye the do as thou ſayſte and I ſhall wyth good wyll make anſwere therto as well as I can.

¶ The ſeconde queſtyon of the doctoure yf a man procure a collaterall warrantye to extyncte a ryght that he knowyth a nother man hathe to lande whether yt be a barre in conſcyence as yt ys in the lawe or not.

The.xlv.chapytre.

¶ Doctour. A man ys dyſſeaſyd of certayne lande the dyſſeaſoure ſellyth the lande.&c. the alyene knowynge of the dyſſeaſon opteynyth a releaſe with a warrantye of an aunceſtre colaterall to the dyſſeaſye that knoweth alſo the ryght of the dyſſeaſye. The aunceſtre colaterall dyeth after whoſe deth the warrantye dyſcendyth vppon the dyſſeaſye / whether maye the alyene in that caſe holde the lande in conſcyence as he may by the lawe. ¶ Student. Syth the warrantye ys dyſcendyd vppon hym whereby he ys barryd in the lawe / me thynkyth that he ſhall alſo be barryd in conſcyence / and that this caſe is lyke to the caſe in the nexte chapytre before / wherin I haue ſayd that as me thynkyth yt ys a barre in conſcyence. ¶ Doctoure. Thoughe yt myght be taken for a barre in conſcyence in that caſe / yet me thynkyth in this caſe yt can not / for in that caſe the yonger brother entryd as heyre knowynge none other but that he was heyre of ryght / and after when he ſolde the lande the byer knewe not but that he that ſolde it had good ryght to ſelle it / and ſo he was ygnoraunt of the tytle of the eldeſt brother and that ygnoraunce came by the defaute & abſence of hym ſelfe that was the elder brother. But in this caſe as well the byer as he that made the colaterall warantye knewe the ryght of the dyſſeaſye and dyd that they coulde to extyncte that ryght / and ſoo they dyd as they wolde not ſholde haue be done to theym / and ſo yt ſemyth that he that hath the lande may not with conſcyence kepe yt. ¶ Student. Thoughe yt be as thou ſayſte that all they offendyd in opteynyng of the ſayd colaterall warrantye / yet ſuche offence ys not to be conſyderyd in the lawe but yt be in very ſpecyall caſes / for if ſuch alegyaūce ſholde be acceptyd in the lawe / releſſes ⁊ other wrytynges ſholde be of ſmale effecte / ⁊ vpon euery lyght ſurmyſe all wrytynges myght come in tryall whether they were made with conſcyence or not. Therfore to auoyde that inconuenyence the lawe wyll dryue the partye to anſwere onely whether it be his dede or not / ⁊ not whether the dede were made with conſcyence or agaynſt conſcyence / and thoughe the partye maye be at a myſchyefe thereby / yet the lawe wyll rather ſuffre that myſchyefe then the ſayd inconuenyence. And lyke lawe ys yf a woman couerte for drede of her huſbande and by cōpulcyon of hym leuye a fyne / yet the woman after her huſbandes dethe ſhall not be admyttyd to ſhewe that matter in auoydyng of the fyne for the inconuenyence that myght folowe therupō. ⁊ after oppynyon of many mē there is no remedye in theyſe caſes in the chauncery for they ſay that where the comon lawe in caſes cōcernyng enherytaunce puttyth the partye fro any auerment for eſchewyng of an inconuenyence that myght folowe of yt amonge the people/that yf the ſame incōuenyence ſhold folowe in the chaūcery yf the ſame matter myght be pledyd there: that no ſubpena ſholde lye in ſuche caſes/⁊ ſo yt is in the caſes before rehercyd/ For as moche vexacyon/delay/coſtes/and expencys myght growe to the party yf he ſhold be put to āſwere to ſuche auermentes in the chauncerye as yf he were put to anſwere to theym at the comō law ⁊ therfore they thynke that no ſubpena lyeth in the ſayd caſes ne in other lyke vnto theym. Neuertheles I do not take yt that theyr oppynyon ys that he that bought the lande in this caſe may with good cōſcyence holde the lande bycauſe he ſhall not be compellyd by no lawe to reſtore yt/ but that he ys in conſcyence and by the lawe of reaſon bounde to reſtore yt or otherwyſe to recompence the partye ſo as he ſhall be cōtentyd/

and I ſuppoſe veryly yt ys ſo yf he wyll kepe his ſoule out of peryll and daunger. And after ſome men to theyſe caſes maye be reſemblyd the caſe of a fyne with none clayme that ys remembred before in the .xiiii. chapytre of thys boke / where a mā knowynge a nother to haue ryght to certayne lande cauſyth a fyne to be leuyed therof with proclamacyon / and the other ſufferyth fyue yeres to paſſe without clayme in that caſe he hathe no remedye neyther by comon lawe nor by ſubpena / and that yet he that leuyed the fyne ys boūde to reſtore the lande in conſcyence. And me thynkyth I coulde ryght well agree that yt ſholde be ſo in thys caſe / and that ſpecyally / bycauſe the partye hym ſelfe knowyth perfytelye that the ſayde colaterall warrantye was opteynyd by couen & agaynſte conſcyence.

¶ The thyrde queſtyon of the doctour ys of wrecke of the ſee.

The .xlvii. chapytre.

¶ The .xlvii. chapytre

¶ Doctoure. I pray the let me nowe here thy mynde howe the lawe of Englande concernynge goodes that be wreckyd vpō the ſee may ſtande with cōſcyence / for I am in grete doute of yt. ¶ Student. I pray the let me fyrſt here thyne opynyon what thou thynkeſt therein.

¶ Doctour. The ſtatute of weſtmynſtre the fyrſte / that ſpekyth of wrecke ys / that yf any man dogge or catte come alyue to the lande out of the ſhyp or barge / that yt ſhall not be iuged for wrecke ſo that yf the partye to whome the goodes belonge come within a yere and a daye ⁊ proue theym to be hys that he ſhal haue theym or elles that they ſhall remayne to the kynge. And me thynkyth that the ſayd ſtatute ſtādyth not wyth conſcyence / for there ys noo lawfull cauſe why the party ought to forfet hys goodes ne that the kyng or lordes ought to haue theym: for there ys no cauſe of forfeture in the partye / but rather a cauſe of ſorowe ⁊ heuynes. And ſo that lawe ſemyth to adde ſorowe vpon ſorow And therefore doctours holde comonly that he that hath ſuche goodes is bounde to reſtytucyō / and that no cuſtom may helpe / for they ſay it is agaynſt the cōmaundement of god. Leui. xix.

where yt ys commaundyd that a man ſhal loue hys neyghbour as hym ſelfe / and that they ſay he doth not that takyth awaye hys neyghbonrs goodes / but they agree that yf any man haue coſte and laboure for the ſauynge of ſuche goodes wrecked ſpecyally ſuche goodes as wolde peryſſhe yf they laye ſtyll in the water / as ſuger / paper / ſalte / meke / and ſuche other / that he ought to be alowed for his coſtes and labour: but he muſt reſtore the goodes excepte he could not ſaue theym without puttynge hys lyfe in ieoperdye for theym / aud then if he put his lyfe in ſuche ieoperdye and the owner by comon preſumpcyon had had no way to haue ſaued theym then it ys moſt comonly holden that he may kepe the goodes in conſcyence / but of other goodes that wolde not ſo lyghtly peryſſhe / but that the owuer myght of comon preſumpcyon ſaue theym hym ſelfe or that myght be ſauyd wythout any peryll of lyfe / the takers of theym be bounde to reſtytucyon to the owner whether he come within the yere or after the yere. And me thynkyth thys caſe ys ſomwhat lyke to a caſe that I ſhall put / yf there were a lawe and a cuſtome in thys realme or yf yt were ordeynyd by ſtatute that yf any alyen came thrughe the realme in pylgrymage ⁊ dyed / that all hys goodes ſhold be forfet / that lawe ſhold be agaynſt cõſcyence for ther is no cauſe reſonable why the ſayd goodes ſholde be forfet. And no more me thynkyth there is of wrecke. ¶ Studẽt. There be dyuers caſes where a man ſhall leſe his goodes and no defaute in hym / as where beeſtes ſtraye awaye fro a man and they be taken vp and proclaymyd and the owner hath not herde of them within the yere ⁊ the day / though he made ſuffycyent dylygence to haue herde of theym / yet the goodes be forfet ⁊ noo defaute in hym / ⁊ ſo it ys where a mã kylleth a nother with the ſword of. J. at ſtyle the ſworde ſhall be foret as a deodande ⁊ yet no defaute is in the owner / ⁊ ſo me thynkyth it maye be in this caſe / ⁊ that ſyth the comõ lawe before the ſayd ſtatute was that the goodes wreckyd vpon the ſee ſhall be forfet to the kyng: that they be alſo forfet nowe after the ſtatute / excepte they be ſauyd by folowyng the ſtatute / for the lawe muſt nedes reduce the propertye of all goodes to ſome mã / ⁊ whẽ the goodes be wreckyd it ſemeth the ꝓpertye is in noo mã: but admyt that the ꝓperty remayne ſtyl in the owner: thẽ if the owner percaſe wold neuer clayme thẽ it ſholde not be knowẽ who ought to take thẽ: ⁊ ſo might they be diſtroyed ⁊ no ꝓfyte come of thẽ/ wherfoꝛe me thynkith it reſonable that the lawe ſhall appoynt who ought to haue thẽ/ ⁊ that hath the law appoyntyd to the kynge as ſouerayn ⁊ hed ouer the people. ¶ Doctour ĩ the caſes that thou haſt put befoꝛe of the ſtray. ⁊ deodand there be cõſideracyõs why they be foꝛfet: but it is not ſo here ⁊ me thynkyth that ĩ this caſe it were not vnreſonable that the law ſhold ſuffre any man that wolde take the ym to take and kepe thẽ to the vſe of the owner / ſauynge his reſonable expẽces: ⁊ this me thynkyth were moꝛe reſonable law thẽ to pull the ꝓpertye out of the owner without cauſe: but if a mã ĩ the ſee caſt his goodes out of the ſhyp as foꝛſakẽ there doctours hold that euery mã may take thẽ lawfully that wyl: but otherwyſe it is as they ſay: if he thꝛowe thẽ out foꝛ fere that they ſholde ouercharge the ſhyp. ¶ Studẽt. There is no ſuch law ĩ this realme of goodes foꝛſakẽ: foꝛ though a mã weyue the poſſeſſyõ of his goodes ⁊ ſayth he foꝛſakyth thẽ yet by the law of the realme the ꝓperty remaynyth ſtyll in hym/ ⁊ he may ſeaſe thẽ after whẽ he wyl/ ⁊ if any mã in the meane tyme put the goodes ĩ ſafegard to the vſe of the owner: I thynke he doth lawfully ⁊ that he ſhal be alowid foꝛ his reſonable expẽces ĩ that behalf he ſhal be of goodes founde / but he ſhal haue no property in theym no more thē in goodes foūde. And I wolde agre that yf a mā preſcrybe that yf he fynde any goodes within hys maner that he ſholde haue theym as his owne / that that preſcrypcyon were voyde / for there is no conſyderacyon howe that preſcrypcyon myght haue a lawfull begynnynge but in thys caſe me thynkyth there ys. ¶ Doctoure. what ys that.

¶ Student. It ys thys the kynge by the olde cuſtome of the realme as lorde of the narowe ſee ys bounde as yt ys ſayd to ſcoure the ſee of pyrattes and petyte robbers of the ſee. And ſoo yt ys redde of the noble kynge ſaynt Edgare that he wolde twyſe in the yere ſcoure the ſee of ſuche pyrattes / but I meane not therby that the kynge ys bounde to condute hys marchauntes vpon the ſee agaynſte all outwarde enemyes / but that he ys bounde onely to put awaye ſuche pyrattes and petyte robbers. And bycauſe that can not be done without grete charge yt ys not vnreaſonable yf he haue ſuche goodes as be wreckyd vpon the ſee towarde that charge.

¶ Doctoure. Vpon that reaſon I wyll take a reſpyte tyll a nother tyme.

¶ The fourth queſtyon of the doctoure whether yt ſtande with conſcyence to prohybyte a Jurye of mete and drynke tyll they be agreed.

The.xl viii.chapytytre.

¶ Doctour. If one of the.xii.men of an enqueſt know the very trouth of his owne knowlege and inſtructyth hys felowes thereof and they wyll in noo wyſe gyue credence to hym/⁊ therupon bycauſe mete and drynke ys prohybyt theym he ys dryuen to that poynte that eyther he muſt aſſente to theym and gyue the verdyte agaynſt hys owne knowlege and agaynſte hys owne cõſcyence/or dye for lacke of mete/how may that lawe then ſtande with conſcyence that wyll dryue an innocent to that extremytye to be eyther forſworne or to be famyſſhyd ⁊ dye for lacke of mete. ¶ Student. I take not the law of the realme to be that a Jurye after they be ſworne may not ete nor drĩke tyl they be agreed of the verdyt:but trouth it is there is a maxym and an olde cuſtome in the lawe that they ſhall not ete nor drynke after they be ſworne tyl they haue gyuen theyr verdyte without the aſſent ⁊

lycence of the Juſtyce / and that ys ordeynyd by the lawe for the eſchewynge of dyuers incōuenyences that myght folowe therupon / and that ſpecyally yf they ſholde ete or drynke at the coſtes of the partyes / and therefore yf they doo the contrarye / yt maye be layde in areſt of the iugement / but with the aſſente of the Juſtyce they may bothe ete and drynke / as if any of the Juroures falle ſyke before they be agreed of theyr verdyt ſo ſore that he maye not comon of the verdyt / thē by the aſſent of the Juſtyce he may haue mete and drynke and alſo ſuche other thynges as be neceſſary for hym / & hys felowes alſo at theyr owne coſtes or at the indyfferente coſtes of the partyes yf they ſo agre by the aſſēt of the Juſtyce may bothe ete and drynke / and therfore yf the caſe happen that thou nowe ſpekyſt of & that the Jury can in noo wyſe agre in theyr verdyt / & that apperyth to the Juſtyce by examynacyon / the Juſtyces maye in that caſe ſuffre thē haue bothe mete & drynke for a tyme to ſe whether they wyll agre / & yf they wyll in no wyſe agre: I thynke that then the Juſtyces may ſet ſuche order in the matter as ſhall ſeme to thē by theyr dyſcrecyon to ſtande with reaſon

⁊ conſcyence by awardynge of a newe enqueſt ⁊ by ſettynge fynes vpon thẽ that they ſhall fynde in de faute or other wyſe as they ſhal thynke beſt by theyr dyſcrecyon lyke as they may do yf one of the Jury dye before verdyt or yf any other lyke caſualtyes fall in that behalfe. But what the Juſtyces ought to do in this caſe that thou haſt put by theyr dyſcrecyon I wyll not treate of at thys tyme.

¶ The.v.queſtyon of the doctoure whether the colours that be gyuen at the comon lawe in aſſyſes/accyons of treſpas ⁊ dyuers other accyons ſtande with cõſcyence bycauſe they be moſt comonly feynyd and be not trewe.

The.xlix.chapytre.

¶ Doctour. I pray the let me here thy mynde to what intente ſuche colours be gyuen/⁊ ſyth they be comonly vntrue howe they may ſtande with cõſcyence. ¶ Student. The cauſe why ſuch colonrs be gyuẽ is this/there is a maxym ⁊ a groũde in the lawe of Englande that yf the defendaunt or tenaunt in any accyon plede a ple that amoũtyth to the generall yſſue that he ſhal be compellyd to take the generall yſſue/ and yf he wyll not/ he ſhall be condempnyd for lacke of anſwere/ and the generall yſſue in aſſyſe ys/ that he that ys namyd the dyſſeaſoure hathe done noo wronge nor noo dyſſeaſon. And in a wrytte of entree in the nature of aſſyſe the generall yſſue is that he dyſſeaſyd hym not/ and in an accyon of treſpas that he ys not gyltye and ſo euery accyon hathe hys generall yſſue aſſygnyd by the lawe/ and the tenaunte muſte of neceſſytye eyther take that generall yſſue/ or plede ſome plee in abatemente of the wrytte/ to the iuryſdyccyon/ to the perſone/ or elles ſome barre or ſome matter by way of concluſyon. And therfore yf Iohan at ſtyle infeffe Henry herte of lande and a ſtraunger bryngeth an aſſyſe agaynſt the ſayd Henry herte for that lande whoſe tytle he knowyth not. In thys caſe yf he ſholde be compellyd to plede to the poynte of the aſſyſe/ that ys to ſaye/ that he hath done no wronge ne no dyſſeaſon all the matter ſholde be put in the mouthes of the.twelue.laye men whyche be not lernyd in the lawe/ and therfore better yt is that the lawe be ſo orderyd that yt be put in the determynacyon of the iuges the of lay men. And yf the ſayd Henry herte in the caſe before reherſyd wolde plede in barre of the aſſyſe that Johan at ſtyle was ſeaſyd and infeffyd hym/by force wherof he entryd and aſkyth iugement yf that aſſyſe ſholde lye agaynſt hym that ple were not good for it amountyth but to the generall yſſue and therefore he ſhall be compellyd to take the generall yſſue or elles the aſſyſe ſhall be awardyd agaynſt hym for lacke of anſwere. And therefore to the intente the matter may be ſhewyd and pledyd before the iuges rather then before the Jurye/the tenau͂tes vſe to gyue the pleyntyffe a coloure/that ys to ſaye a colour of accyo͂ wherby it ſhal appere that it were hurtfull to the tenau͂t to put that matter that he pledyth to the iugement of.xii. men/ & the mooſt comon coloure that ys vſyd in ſuche caſe ys thys/when he hathe pledyd that ſuche a ma͂ enfeffyd hym as before apperyth: it ys vſyd that he ſhall plede ferther and ſay that the pleyntyffe claymyng in by a colour of a dede of feffement made by the ſayd feffoure before the feffement made to hym/where nought paſſyd by the dede entred/vpon whom he entryd and aſkyth Jugement yf the aſſyſe lye agaynſt hym.

In thys caſe bycauſe yt apperyth to be a doute to vnlernyd mē whether the lande paſſe by the dede without lyuerey or not/therfore the lawe ſufferyth the tenaunt to haue that ſpecyall matter to brynge the matter to the determynacyon of the iugges. And in ſuche caſe the iugges maye not put the tenaunt fro the ple for they knowe not as iugges but that it ys trewe/and ſo yf any defaute be yt is in the tenaūt ⁊ not in the courte And though the trouthe be that there were no ſuche dede of feffement made to the pleyntyffe as the tenaunt pledyth/ yet me thynkyth yt ys no defaute in the tenaūt for he doth it to a good intente as before apperyth. ¶ Doctour. yf the tenaunt knowe that the feffoure made no ſuche dede of feffement to the playntyffe/then there ys a defaute in the tenaūt to plede it/for he wyttyngly ſayth agaynſt the trouth/and it is holdē by all doctours that euery lye ys an offēce more or leſſe/for yf yt be of malyce ⁊ to the hurte of his neyghbour/then it ys called mendaciū pernicioſum/and that ys deedly ſynne. And yf yt be in ſporte and not to the hurte of no man nor of cuſtome vſyd ne of pleaſure that he hathe in lyenge/then yt ys venyall ſynne/ and ys cal/

lyd in latyn mendacium iocoſum. And yf yt be to the profyte of his neyghbour and to the hurte of no man thē yt ys alſo venyall ſynne/ and ys callyd in latyn mendacium officioſū. And thoughe it be the leeſt of tho thre yet yt ys a venyall ſynne ⁊ wold be eſchewyd. ¶ Studēt. though the mydwyffes of Egypte lyed when they had reſeruyd the male chyldren of the Ebrewes/ ſayeng to the kyng Pharo/ that the Ebrewes had womē that were cunnyng in the ſame craft whiche or they came had reſeruyd the chyldren alyue where in dede they theym ſelfe of pytye ⁊ of drede of god reſeruyd theym. yet Saynt Jerome expoūdyth the texte folowyng which ſayth that our lorde therfore gaue theym houſes that it ys to be vnderſtande that he gaue theym ſpyrytuall houſes ⁊ that they had therfore eternall rewarde/ ⁊ yf they ſynnyd by that lye all though it were but venyall/ yet I can not ſe howe they ſholde haue therefore eternall rewarde. And alſo yf a man intendynge to ſlee another aſke me where that mā ys/ ys yt not better for me to lye and to ſay I can not tell where he is though I knowe it/ then to ſhewe where he is wherupon murder ſholde folowe.

¶ Doctoure. The dede that the mydwyffes of Egypte dyd in ſauyng the chyldrẽ was merytoryous and deſeruyd rewarde euerlaſtynge (yf they byleuyd in god) and dyd good dedes beſyde as it is to preſume they dyd / when they for the loue of god refuſyd the dethe of the Innocentes / and then thoughe they made a lye after whiche was but venyall ſynne that coulde not take fro theym theyr rewarde / for a venyall ſynne dothe not vtterly extyncte charytye / but lettyth the feruour therof: & therfore it may well ſtande with the wordes of ſaynt Jerome that they had for theyr good dede eternall houſes / and yet the lye that they made to be a venyall ſynne / but neuertheles yf ſuche a lye that ys of yt ſelfe but venyall be affermyd with an othe / yt ys alwaye mortall yf he knowe yt be falſe that he ſweryth. And as to the other queſtyon yt is not lyke to this queſtyon that we haue in hande as me ſemyth / for ſomtyme a man for eſchewynge of the gretter euyll maye doo a leſſe euyll / and then the leſſe ys no offence in hym / and ſoo yt ys in the caſe that thou haſt put wherin bycauſe yt ys leſſe offence to ſay he wottyth not where he ys thoughe he knowe where he ys then yt is to ſhewe where he is / wherupō murdre ſholde folowe / yt ys therefore no ſynne to ſay he wottyth not where he is / for euery mā ys bounde to loue hys neyghbour / & yf he ſhewe i this caſe where he is knowyng his dethe ſhold folowe therupon yt ſemyth that he louyd hym not / ne that he dyd not to hym as he wolde be done to / but in the caſe that we be in here / there ys noo ſuche ſynne eſchewyd / for thoughe the partye pledyd the general yſſue the Jurye myght fynde the trouthe in euery thyng / & therfore in that he ſayth that the playntyffe claymyng i by the colour of a dede of feffemēt where nought paſſyd entryd .&c. knowyng that there was noo ſuche feffement yt was a lye in hym and a venyall ſynne as me thynkyth. And euery mā ys bounden to ſuffre a dedly ſynne in his neyghboure / rather thē a venyall ſynne in hym ſelfe.

¶ Student. Thoughe the Jurye vppon the generall yſſue maye fynde the trouthe as thou ſayſte / yet yt is moche more daungerous to the Jurye to enquere of many poyntes then to enquere onely of one poynte. And for as moche as our lorde hath gyuen a commaundement to euery mā vpon hys neyghbour / therfore euery man ys bounde to forſee as moche as in hym ys that by hym no occaſyon of offence come to hys neyghboure. And for the ſame cauſe / the lawe hath ordeynyd dyuers maxymes & pryncyples whereby yſſues in the kynges courte maye be ioynyd vpon one poynte in certayne as nyghe as may be / and not in a generaltye / leſt offence myght folowe therupon agaynſt god / & a hurte alſo vnto the Iurye / wherfore yt ſemyth that he louyth not hys neyghboure as hym ſelfe / ne that he doth not as he wolde be done to that offeryth ſuche daunger to hys neyghbour where he may well and conuenyently kepe yt fro hym yf he wyll folowe the order of the lawe / and yt ſemyth that he puttyth hym ſelfe wylfully in ieoperdye that dothe yt / & it is wrytten Ecclesiastici .iii. Qui amat periculum in illo peribit / that ys to ſaye / he that louyth peryll ſhall peryſſhe in yt / and he that puttyth hys neyghbour in peryll to offende puttyth hym ſelfe in the ſame / and ſo ſholde he doo me ſemyth that wolde wylfully take the generall yſſue where he myght conuenyently haue the ſpecyall matter / and ferthermore yt ys none offence in prynces & rulers to ſuffre contractes & byenge & ſellyng in markettes/ fayres/ thoughe bothe periurye and dyſceyte wyll folowe therupon / bycauſe ſuche contractes be neceſſarye for the comon welthe/ ſo yt ſemyth lyke wyſe that there ys no defaute in the partye that pleadyth ſuche a ſpecyall matter to auoyde fro hys neyghboure the daunger of periurye/ ne yet in the courte thoughe they enduce hym to it/ as they do ſomtyme for the intent before rehercyd/ and in lyke wyſe ſome wyll ſay that yf the rulers of Cytyes ⁊ communaltyes ſomtyme for the punyſſhment of felons/ murderers/ ⁊ ſuche other offenders wyll to the intente they wolde haue theym to cōfeſſe the trouth ſay to theym that be ſuſpectyd that they be informyd in ſuche certayne defautes or myſdemeanours in the offenders and that they do to the intente to haue theym to confeſſe the truth that thoughe they were not ſoo informyd that yet yt ys noo offence to ſaye they were ſo informyd bycauſe they doo it for the comon welthe/ for yf offenders were ſufferyd to go vnpunyſſhyd the comon welth wolde ſoone decay ⁊ vtterly peryſſhe. ¶ Doctoure. I wyll take aduyſement vpon thy reaſon in this matter tyll a nother ſeaſon.

❡ The .l. chapytre.

❡ The ſyxte queſtyon of the doctoure whether the ſtatute of .xlv. of Edwarde the thyrde of Silua cedua ſtande with conſcyence. The .l. chapytre.

❡ Doctoure. In the .xlv. yere of the reygne of kyng Edwarde the thyrde / yt was enactyd that a prohybycyon ſholde lye where a man ys empledyd in the courte cryſtyen for dyſmes of woode of the age of .xx. yere or aboue by the name of Silua cedua / howe may that ſtatute ſtande with cõſcyẽce that ys ſo dyrectly agaynſt the lybertye of the chyrche and that ys made of ſuche thynges as the parlyament had no authorytye to make any lawe of. ❡ Student. It apperyth in the ſayd ſtatute that yt is enactyd that a prohybycyon ſholde lye in that caſe as yt had vſyd to do before that tyme / and yf the prohybycyon lay by a preſcrypcyõ before that ſtatute why ys not then the ſtatute good as a confyrmacyon of that preſcrypcyon. ❡ Doctoure. If there were ſuche a preſcrypcyon before that ſtatute that preſcrypcyon was voyde / for yt prohybytyth the payment of tythes of trees of the age of .xx. yere or aboue / and payenge of tythes ys groundyd as well vpon the lawe of god as vpon the lawe of reaſon and agaynſte tho lawes lyeth no preſcrypcyon as yt is holden moſt comonly by all men. ¶ Student. That there was ſuche a preſcrypcyon before the ſayd ſtatute / and that yf a man before the ſayd ſtatute had ben ſuyd in the ſpyrytuall courte for tythes of woode of the age of .xx. yere or aboue that a prohybycyon laye / apperyth in the ſayd ſtatute / and it can not be thought that a ſtatute that ys made by authorytye of the hole realme / as well of the kynge / of the lordes ſpyrytuall & temporall and of all the comons / wyll recyte a thynge agaynſt the trouth. And ferthermore I can not ſe howe yt can be groundyd by the lawe of god that the tenth parte ſholde be payde for tythe and none other porcyon but that / but I thynke that it be groundyd vpon the lawe of reaſon that a man ſholde gyue ſome reaſonable porcyon of hys goodes temporall to theym that mynyſtre to hym thynges ſpyrytuall / for euery man is bounde to honour god of hys proper ſubſtaunce / and the gyuyng of ſuche porcyon hath not ben onely vſyd amonge faythfull people /

but alſo amonge vnfaythfull people as it apperyth Geneſis.xlvii. where corne was gyuen to the preſtes in Egypte of the comon barnes And saynt Poule in hys epyſtles affermyth the ſame in many places/ as in hys fyrſt epyſtle to the corynthyes the.ix. chapytre where he ſayth he that workyth in the chyrche ſhall ete of that that belongyth to the chyrch. And in his epyſtle to the Galathyes the.vi. chapytre he ſayth/ let hym that ys inſtructyd in ſpyrytuall thynges departe of hys goodes to hym that inſtructyth hym. And ſaynt Luke in the.x. chapytre ſayth that the worke man is worthy to haue his hyre/ all whiche ſayenges may ryght conuenyentlye be taken and applyed to this purpoſe that ſpyrytuall men whiche mynyſtre to the people ſpyrytuall thynges/ ought for theyr mynyſtracyō to haue a competent lyuynge of theym that they mynyſter to. But that the tenth parte ſholde be aſſygnyd for ſuche a porcyon and neyther more nor leſſe/ I can not perceyue that that ſholde be groundyd by the lawe of reaſon nor immedyatlye by the lawe of god/ for before the lawe wryten there was no certayne porcyō aſſygnyd for the ſpyrytuall mynyſters neyther the.x. parte nor the.xii.parte vnto the tyme of Jacob / for yt apperyth Geñ.xxviii.that Jacob auowyd to paye dyſmes whiche was taken amonge the Jues for the.x.parte / yf our lorde proſperyd hym in hys iourney / and yf the .x. parte had ben hys dutye before that auowe / yt had ben in vayne to haue auowyd yt / and ſoo yt had ben yf yt had ben grounded by the lawe of reaſon / and as to that that is ſpokē in the euangelyſtes and in the newe lawe of tythes / yt belongyth rather to the gyuynge of tythes in the tyme of the olde lawe thē of the newe lawe as apperyth Math.xxiii.⁊ Lu.xi.where our lorde ſpekyng to the pharyſyes ſayth / wo be to you pharyſyes that tythe myntes / rewe / and herbes / and forgette the Jugement and the charytye of god / theyſe yt behouyth you to doo and the other not to omytte / that ys to ſaye / yt behouyth you to do iuſtyce and charytye of god and not to omyt payenge of tythes thoughe yt be of ſmale thynges as of myntes / rewe / herbes and ſuche other. And alſo that that the pharyſye ſaythe Luce.xvii. J paye my tythes of all that J haue / ys to be referryd to the olde lawe and not to the tyme of the newe lawe.

Therfore as I take yt the payenge of tythes or of a certayne porcyon to ſpyrytuall men for theyr ſpyrytuall mynyſtracyon to the people/ hath ben groundyd in dyuers maners. Fyrſte before the lawe wryten a certayne porcyon ſuffycyent for the ſpyrytuall mynyſters was due to theym by the lawe of nature/ whiche after theym that be lernyd in the lawe of the realme ys callyd the lawe of reaſon/ and that porcyon ys due by all lawes/ ⁊ in the lawe wrytten the Jues were bou̅de to gyue the .x. parte to theyr preſtes as well by the ſayd auowe of Jacob as by the law of god in the olde teſtament. And in the newe lawe/ the payenge of the .x. parte ys by a lawe made by the chyrch for the ſuſtenau̅ce of theym that mynyſtre to the people. And the reaſon why the .x. parte was ordeynyd by the chyrche to be payde for tythe was thys. There ys noo cauſe why the people of the newe lawe ought to pay leſſe to the mynyſters of the newe lawe/ thenne the people of the olde teſtamente gaue to the mynyſters of the olde teſtamente/ For the people of the newe lawe be bounde to gretter thynges/ then the people of the olde lawe were as yt apperyth. Math. v. where yt ys ſayd/but your good workes abounde aboue the workes of the ſcrybes and the pharyſyes/ ye may not entre in to the kyngdome of heuyn. And the ſacryfyce of the olde lawe was not ſo honourable as the ſacryfyce of the newe lawe is/for the ſacryfyce of the olde lawe was onely the fygure/and the ſacryfyce of the newe law is the thynge that is fyguryd/that was the ſhadowe/this is the trouth. And therfore the chyrche vpon that reaſonable conſyderacyon ordeynyd that the .x. parte ſholde be payde for the ſuſtenaunce of the mynyſters in the newe lawe/ as yt was for the ſuſtenaunce of the mynyſters in the olde lawe/and ſo that lawe with a cauſe may be encreaſyd or mynyſſhed to more porcyō or to leſſe as ſhall be neceſſarye for theym.

¶ Doctour. It apperyth Geneſis.xiiii. that Abraham gaue to Melchyſedech dyſmes & that is taken to be the .x. parte and that was longe before the lawe wryten/ and therefore yt ys to ſuppoſe that he dyd that by the lawe of god.

¶ Student. It apperyth not by any ſcrypture that he dydde that by the commaundement of god/ne by any reuelacyon/ And therefore yt ys rather to ſuppoſe that he dyd parte of dutye and parte of hys owne fre wyll/ for in that he gaue the .x. parte / as a reaſonable porcyon for the ſuſtenaunce of Melchiſedech and his mynyſters / he dyd yt by cōmaundement of the lawe of reaſon as before apperyth / but that he gaue the .x. parte that was of hys free wyll / and bycauſe he thought yt ſuffycyent and reaſonable but yf he had thought the .vii. parte or the .viii. parte had ſuffyſed he myght haue gyuen yt and that with good conſcyence. And ſoo I ſuppoſe that in the newe lawe the gyuynge of the .x. parte ys by a lawe of the chyrche and not by the lawe of god / oneles yt be taken that the lawe of the chyrche ys the lawe of god / as yt ys ſom tyme taken to be / but not appropryatly nor immedyatly / for that ys taken appropryatly to be the lawe of god that ys conteynyd in ſcrypture that is to ſay: in the old teſtamēt or in the newe.

¶ Doctoure. It ys ſomwhat daungerous to ſaye that tythes be groundyd onely vppon the lawe of the chyrche / for ſome men as yt is ſayd ſaye that mannes lawe byndyth not in conſcyence / and ſo they myght happen to take a boldnes therby to denye theyr tythes. ¶ Student. I truſte there be none of that opynyon / and yf there be yt ys grete pytye. And neuertheleſſe they may be compellyd in that caſe by the lawe of the chyrche to paye theyr tythes as well as they ſholde be yf payenge of tythes were groūde meerly vpon the lawe of god. ¶ Doctour. I thynke well it be as thou ſayſte and therfore I holde me contentyd therin. But I pray the ſhewe me thy mynde in this queſtyō / If a hole countrey preſcrybe to pay no tythes for corne or hey nor ſuche other / whether thou thynke that that preſcripcyon ys good. ¶ Student. That queſtyon dependyth moche vppon that that ys ſayd before / for yf payenge of the tenth parte be by the lawe of reaſon or by the lawe of god / then the preſcrypcyon is voyde / but yf yt be by the lawe of man / then it is a good preſcrypcyō ſo that the mynyſters haue a ſuffycyent porcyō beſyde. ¶ Doctour. John Gerſō which was a doctour of dyuynytye in a treatye that he namyd regule morales: ſayth that dyſmes be payd to preſtes by the law of god. ¶ Studēt. The wordes that he ſpekyth there of that matter be theyſe (Solucio decimarū ſacerdotibus eſt de iure diuino quatenus inde ſuſtentētur: ſed quotam hanc vel illā aſſignare: aut in alios redditus commutare poſitiui iuris exiſtit).

That is thus moche to ſay/ the payeng of dyſmes to preſtes ys of the lawe of god/ that they may therby be ſuſteynyd / but to aſſygne thys porcyon or that/ or to chaunge yt to other rentes/ that ys by the lawe poſytyue/ ⁊ yf it ſholde be taken that by that worde: decimarum: which in englyſſhe ys called dyſmes or tythes/ that he ment the tenth parte/ ⁊ that the .x. parte ſhold be payde for tythe by the lawe of god/ then ys the ſentence that folowyth after agaynſte that ſayenge/ for as it apperyth aboue he ſayth after thus/ but to aſſygne this porcyon or that/ or to chaunge yt in to other rentes belongyth to the lawe poſytyue/ that is to the lawe of man/ ⁊ yf the .x. parte were aſſygned by god/ then mayt not a leſſe parte be aſſygnyd by the lawe of mā for that ſholde be contrarye to the lawe of god/ ⁊ ſo yt ſholde be voyde. And me thynkyth that yt ys not lykely that ſo famous a clerke wolde ſpeke any ſentence contrary to the lawe of god or contrary to that he had ſpoken before/ and to proue that he mente not by that terme: dedcime: that dyſmes ſholde alway be taken for the tenth parte/ yt apperyth in the .iiii. parte of hys workes in the .xxxii. tytle: littera y/ where he ſayth thus. (Non vocatur porcio curatis debita propterea: decime: eo quod ſemper ſit decima pars immo eſt interdum viceſima aut triceſima).

That ys to ſay the porcyon due to curates / ys not therfore callyd dyſmes for that yt ys alway the .x. parte / for ſomtyme yt ys the .xx. or the .xxx. parte / & ſo yt apperyth that by thys worde decimarum: he mente a certayne porcyon & not precyſely the .x. parte / & that that porcyō ſholde be payde to preſtes by the lawe of god to ſuſteyne theym with / takynge as yt ſemyth the lawe of reaſon in that ſayeng for the lawe of god as yt may one way be well & conuenyently taken: bycauſe the lawe of reaſon ys gyuen to euery reaſonable creature by god. And then yt folowyth purſueantlye that yt belongyth to the lawe of man / to aſſygne thys porcyon or that as neceſſytye ſhall requyre for theyr ſuſtenaunce / & then hys ſayenge agreyth well to that that ys ſayd before / that ys to ſay / that a certayne porcyon ys due for preſtes for theyr ſpyrytuall mynyſtracyon / by the lawe of reaſon. And then it wolde folowe therupon that yf yt were ordeynyd for a lawe that all payeng of tythes ſholde fro henſforth ceſſe / and that euery curate ſholde haue aſſygnyd to hym ſuch certayne porcyon of lade rent or ānuytye as ſholde be ſuffycyent for hym & for ſuch mynyſters as ſholde be neceſſary to be vnder hym accordynge to the nōbre of the people there/ or that euery paryſſhene or houſholder ſholde gyue a certayne of money to that vſe: I ſuppoſe the law were good/ & that was the meanyng of Iohā Gerſon as yt ſemyth in hys wordes before reherſyd/ where he ſayth. but to chaūge tythes in to other rentes is by the lawe poſytyue/ that is to ſay by the lawe of mā & ſo me thynkyth that yf a hole coūtrey ꝑſcrybe to be quyte of tythes of corne or greſſe ſo that the ſpyrytuall mynyſters haue a ſuffycyent porcyon beſyde to lyue vpon/ that it is a good preſcrypcyon/ & that they ſholde not ocnde/ that in ſuche countreys payde no tythes/ for it were harde to ſay that all the men of ytalye or of the eeſt partyes be dampnyd bycauſe they pay no tithes but a certayn porcyō after the cuſtom there for certayn it is to pay ſuch a certayn porcyō as well they as all other be boūde: yf the chyrche aſke it: any cuſtom not withſtādynge: but yf the chyrch aſke it not it ſemyth that by that not aſkyng the chyrch remyttyth it/ & an exāple therof we may take of the appoſtle poule that thou ghe he myght haue takē his neceſſary lyuyng of thē that he prechyd to / yet he toke yt not / ⁊ neuertheles they that gaue it hym not / dyd not offende bycauſe he dyd not aſke yt / but yf one mā in a towne wolde preſcrybe to be dyſchargyd of tythes of corne ⁊ greſſe / me thynkyth the preſcrypcyon is not good / oneles he can proue that he recompenſyth it in a nother thynge / for yt ſemyth not reaſonable that he ſholde pay leſſe for his tythes thē his neyghboures do: ſeyng that the ſpyrytual mynyſters are boūde to take as moch dylygēce for hym as they be for any other of the paryſſhe: wherfore it myght ſtande with reaſon that he ſhold be cōpellyd to pay his tythes as his neyghboures do / oneles he can proue that he payeth in recompēce therof more then the.x.parte in a nother thyng. Neuertheles I leue that matter to the iugement of other / ⁊ thē for a ferther profe that the ſayd preſcrypcyon of not payeng tythes for trees of.xx.yere ⁊ aboue thoughe it were not good of corne ⁊ greſſe ſhold be good / ſome make this reaſō: they ſay that ther is no tythe but it is eyther a p̄dyal tythe: a perſonall tythe: or a myxte tythe / ⁊ they ſaye that yf a tythe ſholde be payde of trees when they be ſo ſolde / that that tythe were not a predyall tythe: for the predyal tythe of trees is of ſuch trees as bryng forth frutes and that encreaſe yerely / as apple trees / nutte trees / pere tres ⁊ ſuch other wher of the predyall tythe ys the apples / nuttes / peres / ⁊ ſuch other frutes as come of them yerely ⁊ when the frutes be tythyd if the owner after fell the trees there ys no tythe due thereby / ⁊ of theyſe tythes / that is to ſay of predyall tythes was the cōmaūdement gyuē in the olde lawe to the Jewes / as apperyth Leuitici. xxvii. wher it ys ſayd (Omnes decime terre: ſiue de pomis arborū: ſiue de frugibus: dñi ſunt: et illi ſanctificantur) that is to ſaye / all tythes of the erthe eyther of apples of trees / or of greynes be our lordes ⁊ to hym they be ſanctifyed / and thoughe the ſayd lawe ſpekyth onely of apples / yet yt was Vnderſtande of all maner of frutes. And bycauſe yt ſayth that all the tythes of the erthe be our lordes / therfore calues / lambes / ⁊ ſuche other muſt alſo be tythyd / and they be callyd by ſome mē predyall tythes / that ys to ſay / tythes that come of the grounde / howe be yt they calle theym onely predyalles medyate ⁊ they be the ſame tythes that in this wrytyng be callyd myxte tythes / ⁊ the other tythes / that is to ſay / tythes of apples and corne ⁊ ſuche other be callyd predyalles immedyate/for they come immedyatly of the grounde/and ſo do not myxte tythes as euydently apperyth. ¶ Doctoure. But what thynkyſt thou ſhalbe the predyal tythe of aſſhes elmes/ſalowes:alders ⁊ ſuch other trees as bere no frutes wherof any profyte comyth/why ſhall not the.x.parte of the ſelfe thynge be the tythe therof yf they be cut downe as well as yt ys of corne ⁊ greſſe. ¶ Student. For I thynke that there ys to that intent grete dyuerſytye bytwene corne and greſſe ⁊ trees/and that for dyuers conſyderacyons whereof one ys thys. The propertye of corne and greſſe ys not to growe ouer one yere/⁊ yf it do it wyll peryſſhe ⁊ come to nought/and ſo the cuttyng downe of yt ys the perfeccyon and preſeruacyon therof/⁊ alſo a ſpecyal cauſe that any encreaſe folowyth of the ſame. And therfore the .x. parte of that encreaſe ſhall be payde as a predyall tythe and there no deduccyon ſhall be made for the charges of yt/and ſo yt ys of ſhepe and beſtes that muſt be taken and kylled in tyme for elles they may peryſſhe and come to nought. But when trees be felyd that felyng ys not the perfeccyō of the trees ne yt cauſyth not theym to encreaſe but to decay for mooſt comonly the trees wolde be better yf they myght growe ſtyll. And therfore vpon that that ys the cauſe of the decay ⁊ dyſtruccyō of theym yt ſemyth there can no predyall tythe ryſe / ⁊ ſome men ſay that this was the cauſe why our lorde in the ſayd chapytre of Leuiti. xxvii. gaue no cōmaūdement to tythe the trees but the frutes of the trees onely.

¶ Doctour. It apperyth in Paralapō. xxxi. that the Jewes in the tyme of the kynge Ezechyas offeryd in the temple all thynges that the groūde brought forth / ⁊ that was trees as well as corne or graſſe. ¶ Studēt. It apperyth not that they dyd that by the cōmaundement of god wherefore yt ys lyke that they dyd yt of theyr owne deuocyō ⁊ of a feruour that they had aboue theyr dutye to the repayryng of the temple / whiche the kyng Ezechyas had thē cōmaūdyd to be repayryd / ⁊ ſo that texte prouyth nothyng that tythe ſholde be payde for trees / ⁊ therfore they ſaye ferther that trouth it is that yf a man to the entent he wolde pay no tythe wolde wylfully ſuffer his corne ⁊ greſſe to ſtande ſtyll ⁊ to peryſſhe / he ſholde offende cōſyēce therby / but though he ſuffer his trees to ſtāde ſtyll cōtynually without fellyng bycauſe he thynkyth a lyſthe wold be aſkyd if he fellyd thē ſo that he do yt not of an euyll wyll to the curate he offendyth not in cōſcyence / ne he is not boūde to reſtytucyō therfore as he ſhold be if it were of corne ⁊ greſſe as before apperyth / and me thynkyth ferther that in this caſe of tythe woode / the tythe therof wolde ſerue ſo lytell to that purpoſe that tythes be payd for: that it is not lykely that they that made the lawe for payment of tythes entēdyd that any tythe ſholde be payde for trees or woode for the ſpyrytuall mynyſters muſt of neceſſyty ſpende dayly ⁊ wekely / ⁊ therfore the tythe of trees or woode comyth ſo ſeldome wolde ſerue ſo lytel to the purpoſe that it ſhold be payd for that it wold not helpe thē in theyr neceſſytye ſo that yf they ſholde be dryuen to truſte therto though it myght helpe hym ī whoſe tyme it ſhold happē to fall yet it ſholde deceyue thē that truſtyd to it in the meane tyme : ⁊ alſo ſholde leue the paryſſhe without any to minyſter to theym.

¶ Doctour. I wold well agre that for trees that bere frute there ſholde no predyall tythe be paide when they be ſolde / for the predyall tythe of thē is the frutes that come of theym and ſo there can not be two predyalles of one thynge /

But of other trees that bere no frute me thynkyth that a predyall tythe ſholde be payde when they be ſolde / and ſoo yt apperyth that there ought to be by the conſtytucyon prouyncyall made by the reuerēt father in god Robart wynchelſe late archebuſſhop of Cauntorbury where yt is ſayd and declaryd that (ſilua cedua) is of euery kynde of trees that haue beyng in that that they ſholde be cutte or that be able to be cutte whereof we wyll ſayth he that the poſſeſſoure of the ſayd woodes be compellyd by the cenſures of the chyrche to pay to the paryſſhe chyrche / or mother chyrch the tythe as a reall or predyall tythe and ſo by vertue of that conſtytucyon prouyncyall a predyall tythe muſte be payde of ſuche trees as haue no frute / for I wolde well agree that the ſayd cōſtytucyon ꝓuyncyall ſtretchyth not to trees that bere frutes though the wordes be generall for all trees as before apperyth.

¶ Student. I take not the reaſon why a predyall tythe ſholde not be payde for trees that bere frute to be bycauſe two predyall tythes can not be payde for one thynge / for when the tythe ys payde of lambes yet ſhall tythe be payde of wolle of the ſame ſhepe / for yt ys payde for a nother increaſe/ and ſoo yt myght be ſayd that the frute of a tree ys one increaſe & the fellynge a nother/ but I take the cauſe to be for as moche as the fellynge ys not properly an increaſe of the trees but a dyſtruccyon of the trees as yt ys ſayd before. And ferther I wolde here thy mynde vpon the ſayd conſtytucyon prouyncyal whiche wyll that tythe ſholde be payde for trees by the poſſeſſours of the woode that yf the poſſeſſour ſell the woode for. C.li. and gyue the byer a certayne tyme to fell yt in/ what tythe ſhall the poſſeſſour paye as longe as the woode ſtandyth. ¶ Doctoure. I thynke none for the predyall tythe comyth not tyll the woode be fellyd & a perſonall tythe he can not pay/ no more then yf a man pluckyd downe hys houſe & ſellyth yt/ or yf he ſell all hys lande/ in whiche caſes I agree well he ſhall pay no tythe neyther predyall nor perſonall. ¶ Student. And then I put caſe that the byer ſellyth the wode agayn as yt is ſtandyng vpon the grounde to a nother for. CC.li. what tythe ſhall be payde then. ¶ Doctoure. Then the fyrſte byer ſhall paye tythe of the ſurpluſage that he takyth ouer the. C.li. that he payde as a perſonall tythe.

¶ Student. And thē yf the secōde byer after that cut it down ⁊ ſell it whē it is cut down for leſſe thē he payd / what tythe ſhal thē be payde.

¶ Doctour. thē ſhal he that ſellyd thē pay the tythe for the trees as a p̄dyall tythe. ¶ Studēt

I cā not ſe howe that cā be / for he neyther hath the trees that the p̄dyal tythe ſhold be payd for if any ought to be payd / nor he is not poſſeſſour of the groūde where the trees growe: ⁊ therfore if any p̄dyall tythe ſhold be payd it ſhold be payde eyther by the fyrſt poſſeſſour by reaſō of the wordes of the sayd cōſtytucyō pryncypal whiche be that the tythe ſhall be payde by the poſſeſſour of the wood / or by the laſt byer bycauſe he hath the trees that ſhold be tithid ⁊ by the fyrſt poſſeſſour the tythe cā not be payd as a p̄dyal for he cut not theym downe ne they were not cut downe vpō hys bargeyne / and by the laſte byer yt can not be payde neyther as a predyal tythe for the sayd conſtytucyon ſayth that the poſſeſſours of the woodes ſholde be compellyd to pay it. And therfore I ſuppoſe that the trouth ys that in that caſe no tythe ſhall be payde / for as to the laſt ſeller he ſhall paye no perſonall tythe / for he gaynyd no thyng as yt apperyth before / and no predyall tythe ſhall be payde / for yt ſholde be agaynſt the ſayd p̄ſcripcyon/⁊ alſo the cuttyng down is the dyſtruccyō of the trees ⁊ not theyr p̄ſeruacyō as is ſayd before. ¶ Doctoure. thē takeſt thou the ſayd cōſtitucyō to be of ſmale effect as it ſemyth ¶ Studēt. I take it to be of this effect that of wood aboue .xx. yere it byndyth not bycauſe yt is cōtrary to the comō lawe ⁊ to the ſayd p̄ſcrypcyō that ſtādyth good in the comon lawe/but of wood vnder .xx. yere wherof tythe hath bē accuſtomyd to be payd: the cōſtitucyō is not agaiſt the ſayd preſcrypcyon bycauſe payeng of tythe vnder .xx. yere is not ꝓhybyt but ſuffred by the ſayd ſtatute/howbeit ſome ſay that by the very rigour of the comō law tythes ſhold not be payd for wood vnder .xx. yere no more thē for woode aboue .xx. yere ⁊ that a ꝓhybycyon in that caſe lyeth by the comō law / neuertheles bycauſe yt hath ben ſufferyd to the cōtrary ⁊ that in many places tythe hath bē payd therof. I paſſe it ouer but where tythe hath not be payde of wood vnder .xx. yere I thynke none ought to be payd at this day ī law nor cōſcyēce: but admyt it that the ſayd cōſtytucyō takyth effecte for paymēt of tythe wood vnder .xx. yere as a p̄dyal tythe/yet I can not ſe how the tythe therof ſhold be payd by the poſſeſſoure of the woode yf he ſelle thē.

but that it ſhold be payd rather by him that hath the trees/for the conſtytucyon as that the tythe ſhall be payde as a reall or a predyall tythe/⁊ that ys the.x.parte of the ſame trees as yt is of corne/⁊ yf a man bye corne vpon the grounde the byer ſhall pay the tythe and not the ſeller/⁊ ſo yt ſholde ſeme to be here and what the conſtytucyon mente to decree the contrarye in tythe wode I can not tell oneles the meanynge were to ẽduce the owners to pay tithes of grete trees when they fell theym to theyr owne vſe whiche me thynkyth ſholde be very herde to proue to ſtande with reaſon thoughe the ſayd ſtatute had neuer be made as I haue ſayd before. And ferthermore I wolde here vnder correccyon moue one thynge ⁊ that is thys/as it ſemyth they that were at the makynge of the ſayd conſtytucyon that knewe the ſayd preſcrypcyõ dyd not folow the dyrecte order of charytye therin ſo perfytly as they myght haue done/for when they made the ſayde conſtytucyon prouyncyall dyrectely agaynſte the ſayd preſcrypcyon/they ſet lawe agaynſte cuſtome/and power agaynſt power ⁊ in maner the ſpyrytualtye agaynſte the temporaltye/whereby they myght well knowe that grete Varyaunce and ſute ſholde folowe / and therefore yf they had clerely ſene that the ſayde preſcrypcyon had ben agaynſt conſcyence they ſholde fyrſt haue mouyd the kynge and hys coūſayle and the nobles of the realme to haue aſſentyd to the reformacyon of that preſcrypcyon and not to make a lawe as yt were by authorytye and power agaynſt the preſcrypcyon ⁊ then to threte the people and make them byleue that they all were accurſyd that kepe the ſayde preſcrypcyon or that maynteyne yt / and yt ſemyth to ſtande hardlye with conſcyence to reporte ſo many to ſtande accurſyd for folowynge of the ſayd ſtatute ⁊ of the ſayd preſcrypcyon as many do / and yet to doo no more then hath be done to brynge theym out of yt. ¶ Doctoure. Me thynkyth that yt ys not conuenyent that lay mē ſholde argue the lawes and the decrees or conſtytucyons of the chyrche / therfore yt were better for theym to gyue credence to ſpyrytuall rulers that haue cure of theyr ſoules then to truſt to theyr owne oppynyons / and yf they wolde doo ſo then ſuche maters wolde moche the more rather ceſſe then they wyll doo by ſuche reaſonynges. ¶ Student. In that that belongyth to the artycles of the fayth I thynke the people be bounde to byleue the chyrche/ for the chyrche gaderyd togyder in the holy gooſt can not erre i ſuche thynges as belong to the catholyke fayth: but where the chyrche makyth any lawes wherby the goodes or poſſeſſyons of the people may be bounde or by thys occaſyon or other maye be taken fro theym there the people may lawfully reaſon whether the lawes byndyth theym or not for in ſuche lawes the chyrche maye erre and be deceyuyd and deceyue other eyther for ſyngularytye or for couetyce or for ſome other cauſe/ and for that conſyderacyon yt perteynyth moſte to theym that be lernyd in the lawe of the realme to knowe ſuche lawes of the chyrch as trete of the orderynge of landes or goodes and to ſe whether they may ſtande with the lawes of the realme or not/ and therfore yt ys neceſſarye for theym to knowe the lawes of the chyrche that treate of dyſmes of executours of teſtamentes of legacyes baſterdye matrymonye and dyuers other wherein they be bounde to knowe when the lawe of the chyrche muſt be folowyd therin and when the lawe of the realme / wherof bycauſe yt ys not our purpoſe to treate at thys tyme/ I leue to ſpeke any more at thys tyme/ ¶

wyll reſorte agayne to ſpeke of tythes / wherin ſome men ſay that of tynne cole and leade noo tythe ſholde be payde when they be ſolde by the owner of the grounde bycauſe yt ys parte f the enherytaunce & yt ys more rather a dyſtruccyon of the enherytaunce then an encreace / & therfore they ſay that yf a man take a tynne werke and gyue the lorde the tenthe dyſſhe accordynge to the cuſtome that the lorde ſhall pay no tythe of that tenth dyſſhe neyther predyall nor perſonall: but if the other that taketh the werke haue geyns and aduauntage by the werke yt ſemyth that yt were not agaynſt reaſon that he ſholde pay a perſonall tythe of hys geyns the charges deducte. ❡ Doctoure. I praye the ſhewe me fyrſt what thou takyſt for a perſonall tythe and Vpon what grounde perſonall tythes be payde as thou thynkeſt ſo that one of Vs myſtake not a nother therin. ❡ Student. I wyl with good wyll and therfore thou ſhalte Vnderſtande that as I take yt perſonall tythes be not payde for any increaſe of the grounde / but for ſuche profyte as cometh by the labour or induſtrye of the perſone / as by byenge and ſellynge and ſuche other / and ſuche perſonall tythes as I take yt muſt be orderyd after cuſtome / and the chyrche hath not vſyd to leuye thoſe tythes by compulſyon but by cōſcyence of the partyes / neuertheles Raymond ſayth that yt ys good to pay perſonall tythes or with the aſſente of the perſone to dyſtrybute theym to pore men / or elles to pay a certayne porcyon for the hole / but as Inocen. ſayth / where the cuſtome ys that they ſholde be payde the people be bounde to pay theym as wel as predyalles / the expences deducte / how be it in the chyrche of Englande they vſe to ſue for ſuche perſonall tythes as well as for predyalles and that ys by reaſon of a conſtytucyon prouyncyall that was made by Robart wynchelſye late archebuſſhoppe of Caunterburye / by the whiche yt was ordeynyd that perſonall tythes ſholde be payde of craftes and marchauntes / of the lucre of byenge and ſellynge / and in lyke wyſe of carpēters / ſmythes / weuers / maſons and all other that worke for hyre that they ſhall pay tythes of theyr hyre excepte they wyl gyue any thynge certayne to the vſe or to the lyght of the chyrche yf yt ſo pleaſe the perſone / and in a nother place the ſayd archebuſſhop ſayth that of the pawnage of woodes ⁊ ſuche other thynges

&c. and of fyſſhynges/ trees/ bees/ dowues/ & of dyuers other thynges there remembryd: and of craftes/ and of byenge and ſellynge and of the profytes of dyuers other thynges there recytyd/ euery man ſholde ſatyſfye competently to the chyrche to the which they be bounde to gyue yt of ryght/ no expences by the gyuynge of the ſayd tythes deducte or withholde/ but onely for the payment of tythes of craftes and of byeng and ſellynge/ and by reaſon of the ſayd conſtytucyons prouyncyalles ſomtyme ſutes be taken in the ſpyrytuall courte for perſonall tythes &c thereof many men doo meruayle / bycauſe the deductyons many tyme muſt be referryd to the conſcyence of the partye . And they meruayle alſo why a lawe ſholde be made in thys realme for payenge of perſonall tythes more then there ys in other countreys. And here I wolde moue the ferther in one thynge concernynge ſuche perſonall tythes to knowe thy mynde therin / and that ys/ yf a man gyue to a nother an horſe and he ſellyth that horſe for a certayne ſumme/ ſhal he paye any tythe of that ſumme . ¶ Doctoure. what thynkeſt thou therin . ¶ Studet. That he ſhall pay no tythe for there as I take yt the profyte comyth not to hym by hys owne induſtrye but by the gyfte of a nother/ and as I take yt perſonall tythes be not payde for any profyte or aduauntage that cometh newly to a mā excepte yt come by hys owne induſtrye or labour ⁊ ſo yt doth not here. And alſo yf he ſholde pay tythe of that he ſolde the horſe for/ he ſholde pay tythe for the very hole value of the thynge And as I take yt the perſonall tythes for byenge and ſellynge ſhall neuer be payde for the value of the thynge/ but for the clere gaynes of the thynge/ and therfore I take the caſes before reherſyd where a man ſellyth hys lande or pulleth downe a houſe ⁊ ſellyth the ſtuffe/ that he ſholde there pay no tythe/ that yt ys there to be vnderſtande that he hath the lande or houſe by gyfte or by dyſcent/ for yf a man bye lande/ or bye the tymber and ſtuffe of an houſe and ſell it for a gayne I ſuppoſe that he ſholde pay a perſonall tythe for that gayne/ and this caſe is not lyke to a fee or ānuytye graūtyd for counſayle where the hole fee ſhall be tythyd for/ the charges deducte or ſome certayn ſome for yt by agrement/ for there the hole fee comyth for his counſayle whiche is by his owne induſtrye/ But in the other caſe yt ys not ſo / ⁊ the ſame reaſon as for the perſonall tythe myght be made of trees when they deſcende or be gyuen to any man ⁊ he ſellyth theym to a nother that he ſhall paye noo perſonal tythe. ¶ Doctour. Me thynketh that yf the horſe amende in hys keppynge and then he ſell the horſe / that then the tythe ſhall be payde of that that the horſe hathe encreaſyd in value after the gyfte / and ſo yt may be of trees that he ſhall pay tythe of that that the trees be amendyd after the gyfte or dyſcente. ¶ Student. Then the tythe muſt be the .x. parte of the encreaſe the expences deducte / and then of trees the charges muſt alſo be deducte for it is then a perſonall tythe ⁊ there is no tree that is ſo moch worth as it hath hurte the grounde by the growynge / and therfore there can no perſonall tythe be payde by the owner of the grounde when he ſellyth theym though they haue increaſyd in his tyme. Neuertheles I wyll ſpeke no ferther of that matter at this tyme / but wyll ſhewe the that if tyn lede cole or trees be ſold that a myxte tythe can not growe therby / for a myxte tythe ys properly of calues lambes pygges and ſuche other that come parte of the grounde that they be fedde of/ ⁊ parte of the kepynge indnſtrye ⁊ ouerſyght of the owners as yt ys ſayd before/ But tynne leade ⁊ cole are parte of the grounde ⁊ of the free holde ⁊ trees growe of theym ſelfe. ⁊ be alſo annexyd to the fre holde ⁊ wyll growe of theym ſelfe. And alſo the myxte tythe muſte be payde yerely at certayne tymes appoyntyd by the lawe or by cuſtome of the countrey but it maye happen that tynne leade cole ⁊ trees ſhall not be fellyd nor taken in many yeres/ ⁊ ſo it ſemyth it can not be any myxte tythe/ ⁊ theyſe be ſome of the reaſõs which they that wold maynteyne that ſtatute ⁊ preſcrypcyon to be good make to proue theyr intente as they thynke.

¶ Doctoure. what thynke they yf a man ſelle the loppes of his woode whether any tythe ought there to be payde. ¶ Student. They thynke all one lawe of the trees ⁊ of the loppes.

¶ Doctoure. And yf he vſe to ſell the loppes ones in.vii.or.xvi.yere what holde they then. ¶ Student. that all ys one lawe. ¶ Doctour And what is theyr reaſon why tythe ought not to be payde there as well as for woode vnder.xx.yere. ¶ Student. For they ſay that the loppes are to be taken of the ſame cõdycyon as the trees be what tyme ſo euer they be fellyd ⁊ that no cuſtome wyll ſerue in that caſe agaynſte the ſtatute/no more then it ſholde do of grete trees. ¶ Doctour. And what holde they of the barke of the trees. ¶ Student. Therin I haue not herde theyr oppynyons/but it ſemyth to be one lawe with the loppes. ¶ Doctour. I perceyue well by that that thou haſt ſayd before that thy mynde is that yf a hole countrey preſcrybe to be quyte of tythes of trees corne ⁊ greſſe or of any other tythes that that p̄ſcrypcyō is good: ſo that the ſpyrytuall miniſters haue ſuffycyent beſyde to lyue vpō doſt thou not meane ſo. ¶ Studēt yes veryly. ¶ Doctoure. And then I wolde knowe thy mynde yf any mā cōtrary to that preſcrypcyō were ſuyd in the ſpyrytuall courte for corne ⁊ greſſe or any other tythes whether a prohybycyon ſholde lye in that caſe as it dyd after thy mynde before the ſayd ſtatute where a man was ſuyd in the ſpiritual courte for tythe wood ¶ Student. I thynke nay. ¶ Doctour. And why not there as wel as it dyd where a mā was ſuyd for the tythe wood. ¶ Student. For as I take it there is grete dyuerſytye bytwene the caſes ⁊ that for this cauſe there is a maxym in the lawe of England that yf any ſute be taken in the ſpyrytuall courte wherby any goodes or landes myght be recoueryd which after the groundes of the lawe of the realme ought not to be ſuyd there: though percaſe the kynges courte ſhal holde no plee therof: that yet a ꝓhybycyon ſhold lye / ⁊ after whē it had cōtynuyd long that no tythes were payde of wood bycauſe of the sayd ꝓhybycyō ⁊ that after by ꝓceſſe of tyme ſome curates began to aſke tythes of wood cōtrary to the lawe ⁊ cōtrary to the ſayd p̄ſcrypcyō: ſo that varyaūce begā to ryſe bytwene curates ⁊ theyr paryſſhens in that behalfe / then for appeaſynge of the ſayd varyaūce the ſayd ſtatute was made / ⁊ that as it ſemeth more at the callyng on of the ſpyrytualty thē of the tēporaltye / for the ſtatute doth not expreſſely graūt that the ꝓhybycyō in that caſe of tythe wood ſhold lye ſo largely as ſome ſay it lay by the law: how be it it doth not reſtreyn the comō law therin as it apperyth euydently by the wordes of the ſtatute / ⁊ ſo after ſome mē it apperyd before the ſtatute ⁊ alſo after the ſtatute / as I haue touchyd before / that the ſpyrytuall courte ought not in that caſe to haue made any ꝓceſſe for tythe wood: ⁊ ther-ſore if they dyd a ꝓhybycyon lay by the comon lawe: ⁊ lyke law is if the ſpyritual courte make ꝓceſſe vpõ ſuche a legacy as by the lawe of the realme is voyd / as if a mã bequethe to one another mãnes [redacted]: ⁊ the ſpyrytuall courte therupõ makyth ꝓceſſe to execute that legacy: ther a ꝓhybycyon lyeth for it apperyth euydently in the lybell that in the law of the realme that legacy is voyde to all entẽtes ⁊ that he to whõ the legacy is made ſhal neyther haue the horſe nor the value of the horſe / ⁊ in lyke wyſe yf a mã ſelle his lãde for .C. li. ⁊ he is ſuyd after in the ſpyrytual court for the tythe of the ſayd .C. li. there a ꝓhybycyõ ſhal lye: for it apperyth in that caſe opẽly in the lybel that no tythe ought to be payd ⁊ that the ſpyrytual lawe ought not in that caſe to make any ꝓceſſe: wherby the goodes of hym that ſold the lãde myght be takẽ fro hym againſt the lawe of the realme / and vpon this grounde yt ys that yf a man were ſuyd in the ſpyrytuall courte now ſyth the ſtatute for a mortuary that a prohybycyon ſholde lye / for yt apperyth in the lybell that ſyth the ſtatute there ought noo ſute to be taken for mortuaryes / and the ſame lawe is if any ſute were takẽ in the ſpyrytuall courte

horſe

for a newe duetye that ys of late taken in ſome places vpon leaſys of perſonages and vycarages whiche is callyd a dymyſſyon noble / for yt apperyth euydentlye in the lybell yf any be made therupon that no ſuche proceſſe ought by the lawe of the realme to be made in that behalfe / but in the caſe of tythe corne or greſſe or ſuche other thynges wherein thou haſte deſyryd to knowe my mynde / there apperyth no thynge in the lybell but that the ſute therof of ryght perteynyth to the ſpyrytuall lawe / and ſoo for any thynge that apperyth the partye may be holpen in the ſpyrytuall courte by that preſcrypcyon / & yf the caſe were ſo farre put that in the ſpyrytuall courte they wolde not alowe the ſayd preſcrypcyon / yet I thynke no prohybycyon ſholde lye / for thoughe the ſpyrytuall iuges in a ſpyrytuall matter denye the partyes of Juſtyce / yet the kynges lawes can not reforme that / but muſt remyt it to theyr conſcyence. But if there were ſome remedye prouydyd in that caſe / yt were well done / for ſome ſay that in the ſpyrytuall courte they wyll admyt no plee agaynſte tythes. And alſo yf a compoſycyon were made by aſſente of the patrone and of the ordynarye and bytwene a perſone and oone of hys paryſſhens that the perſone and his ſucceſſours ſholde haue for a certayne grou̅de ſo many quarters of corne for his tythe yerely/ and after contrary to that compoſycyon the perſone in the ſpyrytuall courte aſkyth the tythes as they falle/ that in thys caſe no prohybycyon ſholde lye / ne yet thoughe the caſe were further put that the co̅poſycyon were pleadyd in the courte ⁊ were dyſalowyd/ but all reſtyth in the conſcyence of the iuges ſpyrytual as is ſayd before/ how be it bycauſe ſome be of oppynyon that a ꝓhibycyon ſholde lye in thys laſt caſe/ therfore I wyll referre it to the iugement of other/ but in the caſe of the preſcrypcyon before reherſyd I take yt for the clerer caſe that no prohybycyon ſhall lye as I haue ſayd before. And I beſeche our lord that this matter ⁊ ſuche other lyke therto maye be ſoo charytably lokyd vpon that there be not here after ſuche dyuyſyons ne ſuch dyuerſytyes of oppynyons therin as hath ben in tyme paſte wherby hath folowyd grete coſtes ⁊ chargys to many ꝑſons in this realme whiche hath mouyd me to ſpeke ſo farre in this chapitre ⁊ in dyuers other chapytres of this preſent boke as I haue done/not intendynge therby to gyue occaſyon to any perſone to withholde hys tythes that of ryght ought to be payde/ne to alter the porcyon therin before accuſtomyd/but that as me thynkyth they ought to be claymyd by the ſame tytle as they ought to be payde/and by none other/ and that it maye alſo ſome what appere that the ſayd ſtatute of .xlv. of Edwarde the thyrde was well and lawfully made and vpon a good reaſonable cõſyderacyon/and that the ſayd preſcrypcyon ys good alſo/ſo that no man was in any daunger of excommunycacyon for the makynge of the ſayd ſtatute nor yet ys not for the obſeruynge therof/ne yet of the ſayd preſcrypcyon as yt ys notyd by ſome perſons that there ſholde be. And thus I commyt the vnto oure lorde/who euer haue bothe the and me in hys bleſſyd kepynge euerlaſtyngly. Amen.

¶ Finis.

¶ Here after folowyth the table of thys preſent boke.

The table.

¶ The introduccyon. Fo.ii.

¶ The fyrſt queſtyon of the ſtudent whether the tenanut in tayle after poſſybylytye of yſſue extyncte may with conſcyence do waſte. The fyrſt chapytre. Fo.iii.

¶ what ys vnderſtande by this terme when it is ſayd/ thus yt was at the comon lawe. The ſeconde chapytre. Fo.vii.

¶ The ſeconde queſtyon of the ſtudent whether the goodes of mē outlawyd be forfet in cōſcyēce as they be by the law. the.iii.cha. fo.vii.

¶ The thyrde queſtyon of the ſtudent ys/ of waſt done by a ſtrāger in landes that be in the handes of pertyculer tenauntes.&c. The.iiii. chapytre. Fo.xi.

¶ The.iiii.queſtyon of the ſtudent/ whether a mā may with cōſcyēce be of coūſayle agaynſt hym that be knowyth ys the heyre of ryght/ but he is certyfyed baſterde by the ordynarye. The v.chapytre. Fo.xv.

¶ The.v.queſtyon of the ſtudent / whether a mā may with cōſcyence be of counſayle with a mā at the comon lawe knowyng that he hath ſuffycyent matter to be dyſchargyd in the chaūcery that he may not pleade at the comon lawe. The.vi.chapytre. Fo.xvii.

¶ The .vi. queſtyon of the ſtudent / whether a man maye with conſcyence be of counſayle agaynſt the feffour of truſt in an accyon of treſpas that he bryngyth agaynſt his feffe of truſte for takynge the profytes. The .vii. chappytre. Folio. xviii.

¶ The .vii. queſtyon of the ſtudent yf a man that by way of dyſtres comyth to hys dette / but he ought not to haue dyſtreynyd for yt / what reſtytucyon he is bounde to make. The .viii. chapytre. Fo. xx.

¶ For what thynge a man may lawfully dyſtrayne. The .ix. chappytre. Fo. xxiii.

¶ The .viii. queſtyon of the ſtudent whether executours be bounde in conſcyence to make reſtytucyon for a treſpas done by the teſtatoure / and whether they be bounde to pay dettes vpon a contracte fyrſte / or make the ſayd reſtytucyõ. The .x. chapytre. Fo. xxiiii.

¶ The .ix. queſtyon of the ſtudent / whether he that hathe goodes delyueryd hym by force of a legacye be bounde in conſcyence to pay a dette vpon a contracte that the teſtatoure ought / yf the executours haue none other goodes in theyr handes. The .xi. chapytre. Fo. xxviii.

¶ The .x. queſtyon of the ſtudent yf a mã haue yſſue two ſonnes & dyeth ſeaſyd of certayne landes in fee the eldeſt dyeth without yſſue the yongeſt recoueryth by aſſyſe of mortdaunceſtre the lande with damages fro the dethe of the father / whether he be bounde in couſcyence to pay the damages to the executours of the eldeſt brother for the tyme he lyuyd. the .xii. cha. fo. xxxi

¶ The .xi. queſtyon of the ſtudent what damagys the tenaunt in dower ſhall recouer in cõſcyẽce where hyr huſbande dyed not ſeaſyd / but ſhe demaundyd hyr dower & was denyed. The .xiii. chapytre. Fo. xxxiii.

¶ The .xii. queſtyon of the ſtudent yf a man knowynge a nother to haue ryght to hys lande cauſyth a fyne with proclamacyon to be leuyed accordynge to the ſtatute / & he that hath ryght makyth no clayme within .v. yeres whether he be barryd in conſcyence as he ys in the lawe. The .xiiii. chapytre. Fo. xxxvi.

The .xiii. queſtyõ of the ſtudent / yf a mã that hath had a chyld by his wyfe do that in hym is to haue poſſeſſyõ of his wyffes landes & ſhe dyeth or he can haue it / whether in cõſcyẽce he ſhal be tenaũt by the curteſye. the .xv. cha. fo. xxxvii.

The .viiii. queſtyon of the ſtudent / if the grātour of a rent enfeffe the grauntee of the rente of parte of the lande .&c. whether the hole rente be extyncte in conſcyence as yt ys in the lawe. The .xvi. chapytre. Fo.xxxix.

¶ The .xv. queſtyō of the ſtudent / yf he that hath a rent out of two acres be namyd in a recouerye of the one acre he not knowyng therof &c. whether his hole rent be extyncte in conſcyence.&c. The .xvii. chapytre. Fo.xliiii.

¶ The .xvi. queſtyon of the ſtudent / yf a mā haue a vylleyne for terme of lyfe and the vylleyne purchaſyth landes in fee & he that hath the vylleyne entryth / whether he may with conſcyence kepe the landes to hym & to his heyres as he may by the lawe. The .xviii. cha. Fo.xlvi.

¶ The .xvii. queſtyon of the ſtudent yf a mā in the caſe nexte before enforme hym that ys in the reuercyon of the vylleyne that after the dethe of the vylleyne he hath ryght to the lande & counſayleth hym to entre / wherupon grete ſute and chargys folowe / what daunger that ys to hym that gaue the counſayle. The .xix. chapytre. Fo.xlviii.

¶ The .xviii. queſtyon of the ſtudent ys vpō a feffement made vpon cõdycyon that the feffe ſhall pay a rent to a ſtraunger/ howe that feffement ſhall wey in lawe and conſcyence. The. xx. chapytre. Fo. xlix.

¶ The. xix. queſtyon of the ſtudent ys vpon a feffement in fee/ ⁊ yt ys agreed that the feffe ſhall pay a rente to a ſtraunger/ howe that feffement ſhall wey in lawe and conſcyence. The. xxi. chapytre. Fo. li.

¶ Howe vſes in lande began and by what law and the cauſe why ſo moche lande ys put in vſe. The. xxii. chapytre. Fo. liiii.

¶ The dyuerſytye bytwene two caſes wherof one ys put in the. xx. chapytre and the other in the. xxi. chapytre of thys preſent boke. The. xxiii. chapytre. Fo. lviii.

¶ what ys a nude contracte or a nakyd ꝓmyſe after the lawes of englande/ ⁊ whether any accyon may lye therupõ. The. xxiiii. cha. fo. lxi.

¶ The. xx. queſtyon of the ſtudent yf a man that hath two ſonnes one borne before eſpouſels and the other after eſpouſels by his wyll bequethyth to his ſonne ⁊ heyre al his goodes/ which of the ſonnes ſhall haue the goodes in conſcyence. The. xxv. chapytre Fo. lxvii.

angelica whiche he thynketh are necessarye to be sene howe they stande ⁊ agree with the lawe of the realme. The. xlii. chapytre. Fo. c vii.

¶ where ygnoraunce of the lawe excusyth in the lawes of Englande and where not. The xliii. chapytre. Fo. cxi.

¶ Certayne cases ⁊ groundes where ygnorāce of the dede excusyth in the lawes of England ⁊ where not. The. xliiii. chapytre. Fo. cxv.

¶ The fyrst questyō of the doctour/ whether the warrātye of the yonger brother that is takē as heyre bycause yt ys not knowen but that the eldest brother is ded/ be in cōscyence a barre to the eldest brother as yt ys in the lawe. The. xlv. chapytre. Fo. cxvi.

¶ The seconde questyon of the doctour/ whether yf a man ꝓcure a collaterall warrantye to extyncte a ryght that he knoweth a nother man hath to lande be a barre in conscyence as yt is in the lawe. The. xlvi. chapytre. Fo. cxx.

¶ The thyrde questyon of the doctoure ys of wreke of the see. The. xlvii. cha. Fo. cxxii.

¶ The fourth questyon of the doctour/ whether it stande with cōscyence to prohybyt a iury of mete and drynke tyll they be agreed of theyr

Verdyte. The.xlviii.chapytre. Fo.cxxv.

¶ The.v.queſtyon of the doctoure yf whether the colours that be gyuē at the comon lawe in aſſyſes/accyons of treſpas/ & dyuers other accyons ſtande with conſcyence bycauſe they be moſt comonly feynyd and be not trewe. The.xlix.chapytre. Fo.cxvii.

¶ The.vi.queſtyon of the doctoure/ howe the ſtatute that was made in the.xlv.yere of kynge Edwarde the thyrde concernynge the tythe of woode maye ſtande with conſcyence. The.l.chapytre. Fo.cxxx.

¶ Thus endyth the ſeconde dyaloge in Englyſſhe bytwene a doctoure of dyuynytye
and a ſtudent in the lawes of England
whiche treatyth of dyuers thynges
that be ſhortely touchyd in the
fyrſt leffe of thys preſente
boke before the introduccyon.

¶ Impryntyd at London in Southwarke by
Peter Treuerys In the yere of our lorde god
M.D.C.xxx.the.xxiiii.day of Nouembre.

E. J. A.
6/23/08

[illegible] Henry [illegible]

liber [illegible] Dato [illegible]

[illegible] Elis [illegible]

[illegible]

Ffl [illegible]

Commende me to the greatest
and grettest yet woll the small
and for the love of and fayre
[illegible] e me to them all

To our right trusty and welbelo
James Rome and in his absence
to Edmonde Gunpyn keper of
our chace of Thevyngwood
and to either of theym in thabsence
of other

Tho lebins [illegible]
[illegible] gilling
Jo mademan
Andrew Lockham
and for [illegible] the fenn
of the lord [illegible] all and